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and that secures your loan. If you choose this option:

• Your payments will be deposited in an escrow account to be paid to the flood insurance provider.

• The escrow amount for flood insurance will be added to the regular mortgage payment that you make to your lender or its servicer.

• The payments you make into the escrow account will accumulate over time and the funds will be used to pay your flood insurance policy when your lender or servicer receives a notice from your flood insurance provider that the flood insurance premium is due.

To choose this option, follow the instructions below. If you have any questions about the option, contact [Insert Name of Lender or Servicer] at [Insert Contact Information].

[Insert Instructions for Selecting to Escrow]

[80 FR 43258, July 21, 2015]

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

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AUTHORITY: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa-3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); 12 U.S.C. 2154 note; 15 U.S.C. 78o–7 note.

Subpart A—Funding

§615.5000 General responsibilities.

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

[54 FR 1158, Jan. 12, 1989]

§ 615.5010 Funding Corporation.

(a) The Funding Corporation shall issue, market, and handle the obligations of the banks issued under section 4.2(b) through (d) of the Act and interbank or intersystem flow of funds as may from time to time be required, and, upon request of the banks, shall handle investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of such obligations through the Funding Corporation by negotiation, offer, bid, or syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

[54 FR 1158, Jan. 12, 1989]

§ 615.5030 Borrowings from commercial banks.

Each System bank board, by resolution, shall authorize all commercial bank borrowings by that System bank.

[54 FR 1159, Jan. 12, 1989, as amended at 75 FR 35968, June 24, 2010]

§ 615.5040 Borrowings from financial institutions other than commercial banks.

The Farm Credit banks may borrow from other financial institutions, such as insurance companies, Federal agencies, or Federal reserve banks.

[37 FR 11434, June 7, 1972, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

Subpart B—Collateral

SOURCE: 54 FR 1159, Jan. 12, 1989, unless otherwise noted.

§ 615.5045 Definitions.

(a) *Cost* means the actual amount paid for any asset.

(b) *Market value* means the price at which a willing seller would sell to a willing buyer, neither under any compulsion to buy or sell.

(c) *Unpaid balance* means total principal and accrued interest owed.

(d) *Secured interbank loan* means a loan from one Farm Credit System bank to another Farm Credit System bank, secured by assets of the borrowing Farm Credit System bank.

§ 615.5050 Collateral requirements.

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or other similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, real or personal property acquired in connection with loans made under the Act, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents approved by the Farm Credit Administration, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as otherwise provided in this paragraph, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid balance of such loans adjusted for any allowance for loan losses (except as provided for in § 615.5090).

(2) The collateral value of loans in process of liquidation or foreclosure, judgments, and sales contracts shall be the unpaid balance of such loans, judgments, and contracts adjusted for any allowance for losses.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loans adjusted for any allowance for losses.

(4) The collateral value of property acquired in the liquidation of loans

shall be the book value of such property adjusted for any allowance for losses.

(5) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or part 614 of these regulations.

(6) Collateral may include the collateral value of secured interbank loans, computed as provided in §615.5050(c)(1), provided that the assets securing the loan could serve as collateral supporting the issuance of obligations under §615.5050(a). In computing its eligible collateral, the borrowing bank shall not count the assets securing such loan.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

(1) Adequate safekeeping facilities;

(2) Methods to determine that debt instruments meet all requirements of law and regulations;

(3) A report signed by an authorized bank officer at each regular meeting of the board of directors certifying the eligibility and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and

(4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

§615.5060 Special collateral requirement.

(a) An attorney lien certification need not be obtained at the time a note is accepted as collateral if the counsel for the bank or association has determined, in writing, that the bank or association procedures provide sufficient safeguards to ensure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien or its equivalent on the borrower's interest in the primary real estate security. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of the loan closing, unless, before the end of such period:

(1) An attorney has certified that the bank or association has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan; or

(2) The bank or association has obtained a title insurance policy insuring that it has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan, and all of the following requirements are satisfied:

(i) The final policy was issued by a title insurance company that has been licensed to issue such policies by the appropriate state insurance regulatory body or bodies, has not been barred or suspended, and has been approved by the lending institution;

(ii) The standard form on which the final policy was issued has been approved by the counsel for the lending institution;

(iii) The final policy was issued for an amount at least equal to the balance outstanding on the real estate mortgage loan or, if separate policies are issued to insure separate tracts, the minimum amount insured by each policy shall bear the same ratio to the outstanding balance of the loan that the appraised value of the tract insured by that policy bears to the appraised value of all the real estate security for the loan; and

(iv) Personnel meeting written standards of training and experience in real estate title matters prescribed by the counsel for the lending institution certified in writing that:

(A) They reviewed the final policy and that the policy complies with standards prescribed by such counsel; and

(B) The final policy insures that a first lien or its equivalent from a security standpoint has been obtained on the primary real estate security for the loan.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of §615.5050(a).

[54 FR 1159, Jan. 12, 1989, as amended at 59 FR 3787, Jan. 27, 1994]

§ 615.5090 Reduction in carrying value of collateral.

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

§ 615.5100 Authority to issue.

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

(a) Notes, bonds, debentures, or other similar obligations;

(b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act;

(c) Systemwide obligations, together with other banks of the System; and

(d) Investment bonds to the authorized purchasers subject to the limitations contained in the regulations set forth in subpart D.

[54 FR 1160, Jan. 12, 1989]

§ 615.5101 Requirements for issuance.

Except as provided in section 4.2(e) of the Act, each debt obligation shall meet the following requirements:

(a) Each debt obligation shall be issued through the Federal Farm Credit Banks Funding Corporation acting for System banks.

(b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefor is unable to pay.

(c) Each issuance of debt obligations shall meet the collateral requirements set forth in subpart B.

(d) Each issuance of debt obligations shall be approved by the Farm Credit Administration.

(e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by System representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secretary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act.

[54 FR 1160, Jan. 12, 1989]

§ 615.5102 Issuance of debt obligations through the Funding Corporation.

(a) The amount, maturities, rates or interest, terms and conditions of participation by the System banks in each issue of joint, consolidated or Systemwide obligations shall be determined by the Funding Corporation established pursuant to section 4.9 of the Act, acting for the banks of the System, subject to the approval of the Farm Credit Administration in accordance with § 615.5102.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Administration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

[54 FR 1160, Jan. 12, 1989]

§§615.5103–615.5104 [Reserved]

§615.5105 Consolidated Systemwide notes.

Consolidated Systemwide notes authorized under §615.5100(b) shall be subject to the following provisions unless otherwise approved by the Farm Credit Administration:

(a) Maturities shall be not less than five days nor more than 365 days.

(b) Prices shall be on a discount yield basis or as determined by the Funding Corporation.

[42 FR 32227, June 24, 1977, as amended at 47 FR 28609, July 1, 1982; 54 FR 1160, Jan. 12, 1989; 60 FR 20011, Apr. 24, 1995]

Subpart D—Other Funding

§615.5110 Authority to issue (other funding).

Any Farm Credit bank may issue Farm Credit Investment Bonds directly to those eligible as set forth in §615.5120(a). The bonds are subject to the limitations contained in the Federal Reserve Board's Regulation Q.

[43 FR 47489, Oct. 16, 1978; 43 FR 55239, Nov. 27, 1978]

§615.5120 Purchase eligibility requirement.

(a) *Limitations.* Eligibility to purchase Farm Credit Investment Bonds shall be limited to members and employees of the Farm Credit banks and associations, except any bank officers, directors, and employees who are involved in setting the term or rate, to retired employees who are beneficiaries of a pension or retirement program of the Farm Credit banks or associations, and to retired employees of the Farm Credit Administration. A member of a Farm Credit association or a bank for cooperatives need not be an active borrower to be eligible. A member of any Farm Credit institution may purchase investment bonds from any of the institutions in the district which offer the purchase program. Patrons, members, employees, or stockholder of other financing institutions discounting loans with a Farm Credit Bank or agricultural credit bank or of any legal entity which is a borrower from any Farm Credit institution as such are ineligible as they are not members of a Farm Credit institution. Stock or participation certificates shall not be sold merely to qualify a party for the purchase of Farm Credit Investment Bonds. For purposes of this section ''member'' means a stockholder or participation certificate holder who acquired stock or participation certificates to obtain a loan, to purchase stock for investment or to qualify for other services of the association or bank. A person who assumes a loan is not a member unless he becomes a stockholder or participation certificate holder in connection with that loan. Employee means a regular full-time employee of a Farm Credit bank or association. Retired employee means a retiree who is a direct beneficiary of a pension or retirement program of a Farm Credit bank or association or the Farm Credit Administration under civil service retirement.

(b) *Form and ownership.* Farm Credit Investment Bonds are registered bonds issued in definitive or book-entry form depending on investor preference. The registration used must express the actual ownership of an interest in the bond and will be considered by the issuing institution as conclusive of such ownership and interest. No designation of an attorney, agent, or other representative to request or receive payment on behalf of the owner or coowner, nor any restriction on the right of the owner or coowner to receive payment of the bond or interest, except as provided in this section may be made in the registration or otherwise. Registrations requested in applications for the purchase shall be clear, accurate, complete, and conform with one of the registration provisions set forth in this section, and include the appropriate taxpayer identifying number. Registrations requested will be inscribed on the face of the bond if in definitive form or on the confirmation of investment if in book-entry form. The following provisions shall apply for registration of Farm Credit Investment Bonds:

(1) In all cases the member's name (whether a natural person, fiduciary, or legal entity) or employee's name must appear as owner of the bond.

(2) A bond may be registered in the name of a fiduciary only if the fiduciary is in fact the member.

(3) A member or employee may not use a form of registration (such as a gift to a minor, irrevocable trust, etc.) which would divest himself of ownership. However, a minor may be named as coowner or beneficiary.

(4) If a member is a natural person, a second natural person, member or nonmember, may be named as coowner or beneficiary. Coownership may not involve a fiduciary or private organization.

(5) In the coownership form the connective ''or'' shall serve the same purpose as ''joint tenants with right of survivorship.''

[43 FR 47489, Oct. 16, 1978; 43 FR 55239, Nov. 27, 1978, as amended at 56 FR 2675, Jan. 24, 1991; 61 FR 67187, Dec. 20, 1996]

§ 615.5130 Procedures.

Procedures relating to issuance, pricing, payment of interest, redemption, replacement of lost or stolen bonds and other matters shall be promulgated under the authority of this regulation as operating instructions to banks and associations.

[37 FR 11434, June 7, 1972]

Subpart E—Investment Management

§ 615.5131 Definitions.

For purposes of this subpart, the following definitions apply:

Asset-backed securities (ABS) mean investment securities that provide for ownership of a fractional undivided interest or collateral interests in specific assets of a trust that are sold and traded in the capital markets. For the purposes of this subpart, ABS exclude mortgage-backed securities that are defined in this section.

Asset class means a group of securities that exhibit similar characteristics and behave similarly in the marketplace. Asset classes include, but are not limited to, money market instruments, municipal securities, corporate bond securities, MBS, ABS, and any other asset class as determined by FCA.

Country risk classification (CRC) as defined in § 628.2 of this chapter.

Diversified investment fund (DIF) means an investment company registered under section 8 of the Investment Company Act of 1940.

Government-sponsored enterprise (GSE) means an entity established or chartered by the United States Government to serve public purposes specified by the United States Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

Loans are defined by § 621.2 of this chapter and they are calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans during the quarter.

Market risk means the risk to the financial condition of your institution because the value of your holdings may decline if interest rates or market prices change. Exposure to market risk is measured by assessing the effect of changing rates and prices on either the earnings or economic value of an individual instrument, a portfolio, or the entire institution.

Mortgage-backed securities (MBS) means securities that are either:

(1) Pass-through securities or participation certificates that represent ownership of a fractional undivided interest in a specified pool of residential (excluding home equity loans), multifamily or commercial mortgages; or

(2) A multiclass security (including collateralized mortgage obligations and real estate mortgage investment conduits) that is backed by a pool of residential, multifamily or commercial real estate mortgages, pass through MBS, or other multiclass MBSs.

Obligor means an issuer, guarantor, or other person or entity who has an obligation to pay a debt, including interest due, by a specified date or when payment is demanded.

Resecuritization as defined in § 628.2 of this chapter.

Sponsor means a person or entity that initiates a transaction by selling or pledging to a specially created issuing entity, such as a trust, a group of financial assets that the sponsor either has originated itself or has purchased.

United States (U.S.) Government agency means an instrumentality of the U.S. Government whose obligations are fully guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

You means a Farm Credit bank, association, or service corporation.

[64 FR 28895, May 28, 1999, as amended at 70 FR 51589, Aug. 31, 2005; 77 FR 66370, Nov. 5, 2012; 83 FR 27499, June 12, 2018; 85 FR 52253, Aug. 25, 2020]

§615.5132 Investment purposes.

(a) Each Farm Credit bank may hold eligible investments, listed under §615.5140, in an amount not to exceed 35 percent of its total outstanding loans, to comply with its liquidity requirements in §615.5134, manage surplus short-term funds, and manage interest rate risk under §615.5180. To comply with this calculation, the 30-day average daily balance of investments is divided by loans. Investments are calculated at amortized cost. Loans are calculated as defined in §615.5131. For the purpose of this calculation, loans include accrued interest and do not include any allowance for loan loss adjustments. Compliance with the calculation is measured on the last day of every month.

(b) The following investments may be excluded when calculating the amount of eligible investments held by the Farm Credit bank pursuant to §615.5132(a):

(1) Eligible investments listed under §615.5140 that are pledged by a Farm Credit bank to meet margin requirements for derivative transactions; and

(2) Any other investments FCA determines are appropriate for exclusion.

[77 FR 66371, Nov. 5, 2012]

§615.5133 Investment management.

(a) *Responsibilities of board of directors.* The board of directors must adopt written policies for managing the institution's investment activities. The board must also ensure that management complies with these policies and that appropriate internal controls are in place to prevent loss. At least annually, the board, or a designated committee of the board, must review the sufficiency of these investment policies.

(b) *Investment policies—general requirements.* Investment policies must address the purposes and objectives of investments; risk tolerance; delegations of authority; internal controls; due diligence; and reporting requirements. The investment policies must fully address the extent of pre-purchase analysis that management must perform for various classes of investments. The investment policies must also address the means for reporting, and approvals needed for, exceptions to established policies. A Farm Credit bank's investment policy must address portfolio diversification and obligor limits under paragraphs (f) and (g) of this section. Investment policies must be sufficiently detailed, consistent with, and appropriate for the amounts, types, and risk characteristics of its investments.

(c) *Investment policies—risk tolerance.* Investment policies must establish risk limits for eligible investments and for the entire investment portfolio. The investment policies must include concentration limits to ensure prudent diversification of credit, market, and, as applicable, liquidity risks in the investment portfolio. Risk limits must be based on all relevant factors, including the institution's objectives, capital position, earnings, and quality and reliability of risk management systems and must take into consideration the interest rate risk management program required by §615.5180 or §615.5182, as applicable. Investment policies must identify the types and quantity of investments that the institution will hold to achieve its objectives and control credit risk, market risk, and liquidity risk as applicable. Each association or service corporation that holds significant investments and each Farm Credit bank must establish risk limits in its investment policies, as applicable, for the following types of risk:

(1) *Credit risk.* Investment policies must establish:

(i) *Credit quality standards.* Credit quality standards must be established for single or related obligors, sponsors, secured and unsecured exposures, and asset classes or obligations with similar characteristics.

(ii) *Concentration limits.* Concentration limits must be established for single or related obligors, sponsors, geographical areas, industries, unsecured exposures, asset classes or obligations with similar characteristics.

(iii) *Criteria for selecting brokers and, dealers.* Each institution must buy and sell eligible investments with more than one securities firm. The institution must define its criteria for selecting brokers and dealers used in buying and selling investments.

(iv) *Collateral margin requirements on repurchase agreements.* To the extent the institution engages in repurchase agreements, it must regularly mark the collateral to fair market value and ensure appropriate controls are maintained over collateral held.

(2) *Market risk.* Investment policies must set market risk limits for specific types of investments and for the investment portfolio.

(3) *Liquidity risk*—(i) *Liquidity at Farm Credit banks.* Investment policies must describe the liquidity characteristics of eligible investments that the bank will hold to meet its liquidity needs and other institutional objectives.

(ii) *Liquidity at associations.* Investment policies must describe the liquid characteristics of eligible investments that the association will hold.

(4) *Operational risk.* Investment policies must address operational risks, including delegations of authority and internal controls under paragraphs (d) and (e) of this section.

(d) *Delegation of authority.* All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for investments.

(e) *Internal controls.* Each institution must:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments.

(2) Establish and maintain a separation of duties between personnel who supervise or execute investment transactions and personnel who supervise or engage in all other investment-related functions.

(3) Maintain records and management information systems that are appropriate for the level and complexity of the institution's investment activities.

(4) Implement an effective internal audit program to review, at least annually, the investment management practices including internal controls, reporting processes, and compliance with FCA regulations. This annual review's scope must be appropriate for the size, risk and complexity of the investment portfolio.

(f) *Farm Credit bank portfolio diversification*—(1) *Well-diversified portfolio.* Subject to the exemptions set forth in paragraph (f)(3) of this section, each Farm Credit bank must maintain a well-diversified investment portfolio as set forth in paragraph (f)(2) of this section.

(2) *Investment portfolio diversification requirements.* A well-diversified investment portfolio means that, at a minimum, investments are comprised of different asset classes, maturities, industries, geographic areas, and obligors. These diversification requirements apply to each individual security that the Farm Credit bank holds within a DIF. In addition, except as exempted by paragraph (f)(3) of this section, no more than 15 percent of the investment portfolio may be invested in any one asset class. Securities within each DIF count toward the appropriate asset class. Measurement of this diversification requirement must be based on the portfolio valued at amortized cost.

(3) *Exemptions from investment portfolio diversification requirements.* The following investments are not subject to the 15-percent investment portfolio diversification requirement specified in paragraph (f)(2) of this section:

(i) Investments that are fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency;

(ii) Investments that are fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE, except that no more than 50 percent of the investment portfolio may be comprised of GSE MBS. Investments in Farmer Mac securities are governed by § 615.5174 and are not subject to this limitation; and

(iii) Money market instruments identified in § 615.5131.

(g) *Farm Credit bank obligor limit.* No more than 10 percent of a Farm Credit bank's total capital (Tier 1 and Tier 2) as defined by §628.2 of this chapter may be invested in any one obligor. This obligor limit does not apply to investments in obligations that are fully guaranteed as to the timely payment of principal and interest by U.S. Government agencies or fully and explicitly guaranteed as to the timely payment of principal and interest by GSEs. For a DIF, both the DIF itself and the entities obligated to pay the underlying debt are obligors.

(h) *Due diligence*—(1) *Pre-purchase analysis*—(i) *Eligibility and compliance with investment policies.* Before purchasing an investment, the institution must conduct sufficient due diligence to determine whether the investment is eligible under §615.5140 and complies with its board's investment policies. The institution must document its assessment and retain any supporting information used in that assessment. The institution may hold an investment that does not comply with its investment policies only with the prior approval of its board.

(ii) *Valuation.* Prior to purchase, the institution must verify the fair market value of the investment (unless it is a new issue) with a source that is independent of the broker, dealer, counterparty or other intermediary to the transaction.

(iii) *Risk assessment.* At purchase, the institution must at a minimum include an evaluation of the credit risk (including country risk when applicable), liquidity risk, market risk, interest rate risk, and underlying collateral of the investment, as applicable. This assessment must be commensurate with the complexity and type of the investment. The institution must also perform stress testing on any structured investment that has uncertain cash flows, including all MBS and ABS, before purchase. The stress test must be commensurate with the type and complexity of the investment and must enable the institution to determine that the investment does not expose its capital, earnings, or liquidity if applicable, to risks that are greater than those specified in its investment policies. The stress testing must comply with the requirements in paragraph (h)(4)(ii) of this section. The institution must document and retain its risk assessment and stress tests conducted on investments purchased.

(2) *Ongoing value determination.* At least monthly, the institution must determine the fair market value of each investment in its portfolio and the fair market value of its whole investment portfolio.

(3) *Ongoing analysis of credit risk.* The institution must establish and maintain processes to monitor and evaluate changes in the credit quality of each investment in its portfolio and in its whole investment portfolio on an ongoing basis.

(4) *Quarterly stress testing.* (i) The institution must stress test its entire investment portfolio, including stress tests of each investment individually and the whole portfolio, at the end of each quarter. The stress tests must enable the institution to determine that its investment securities, both individually and on a portfolio-wide basis, do not expose its capital, earnings, or liquidity if applicable, to risks that exceed the risk tolerance specified in its investment policies. If the institution's portfolio risk exceeds its investment policy limits, the institution must develop a plan to comply with those limits.

(ii) The institution's stress tests must be defined in a board-approved policy and must include defined parameters for the security types purchased. The stress tests must be comprehensive and appropriate for the institution's risk profile. At a minimum, the stress tests must be able to measure the price sensitivity of investments over a range of possible interest rates and yield curve scenarios. The stress test methodology must be appropriate for the complexity, structure, and cash flows of the investments in the institution's portfolio. The institution must rely to the maximum extent practicable on verifiable information to support all its stress test assumptions, including prepayment and interest rate volatility assumptions. The institution must document the basis for all assumptions used to evaluate the security and its underlying collateral. The institution

must also document all subsequent changes in its assumptions.

(5) *Presale value verification.* Before the institution sells an investment, it must verify its fair market value with an independent source not connected with the sale transaction.

(i) *Reports to the board of directors.* At least quarterly, the institution's management must report on the following to its board of directors or a designated board committee:

(1) Plans and strategies for achieving the board's objectives for the investment portfolio;

(2) Whether the investment portfolio effectively achieves the board's objectives;

(3) The current composition, quality, and the risk and liquidity profiles of the investment portfolio;

(4) The performance of each class of investments and the entire investment portfolio, including all gains and losses realized during the quarter on individual investments that the institution sold before maturity and why they were liquidated;

(5) Potential risk exposure to changes in market interest rates as identified through quarterly stress testing and any other factors that may affect the value of its investment holdings;

(6) How investments affect its capital, earnings, and overall financial condition;

(7) Any deviations from the board's policies (must be specifically identified);

(8) The status and performance of each investment described in § 615.5143(a) and (b) or that does not comply with the institution's investment policies; including the expected effect of these investments on its capital, earnings, liquidity, as applicable, and collateral position; and

(9) The terms and status of any required divestiture plan or risk reduction plan.

[83 FR 27499, June 12, 2018; 83 FR 30833, July 2, 2018]

§ 615.5134 Liquidity reserve.

(a) *Liquidity policy*—(1) *Board responsibility.* The board of each Farm Credit bank must adopt a written liquidity policy. The liquidity policy must be compatible with the investment management policies that the bank's board adopts pursuant to § 615.5133 of this part. At least once every year, the bank's board must review its liquidity policy, assess the sufficiency of its liquidity policy, and make any revisions it deems necessary. The board of each Farm Credit bank must ensure that adequate internal controls are in place so that management complies with and carries out this liquidity policy.

(2) *Policy content.* At a minimum, the liquidity policy of each Farm Credit bank must address:

(i) The purpose and objectives of the liquidity reserve;

(ii) Diversification requirements for the liquidity reserve portfolio;

(iii) The target amount of days of liquidity that the bank needs based on its business model and risk profile;

(iv) Delegations of authority pertaining to the liquidity reserve; and

(v) Reporting requirements, which at a minimum must require management to report to the board at least once every quarter about compliance with the bank's liquidity policy and the performance of the liquidity reserve portfolio. However, management must report any deviation from the bank's liquidity policy, or failure to meet the board's liquidity targets to the board before the end of the quarter if such deviation or failure has the potential to cause material loss to the bank.

(b) *Liquidity reserve requirement.* Each Farm Credit bank must maintain at all times a liquidity reserve sufficient to fund at least 90 days of the principal portion of maturing obligations and other borrowings of the bank. At a minimum, each Farm Credit Bank must hold instruments in its liquidity reserve listed and discounted in the Table below that are sufficient to cover:

(1) Days 1 through 15 only with Level 1 instruments;

(2) Days 16 through 30 only with Level 1 and Level 2 instruments; and

(3) Days 31 through 90 with Level 1, Level 2, and Level 3 instruments.

Liquidity level		Instruments	Discount (multiply by)
Level 1 ...	.....	• Cash, including cash due from traded but not yet settled debt.	100 percent
		• Overnight money market investment.	100 percent
		• Obligations of U.S. Government agencies with a final remaining maturity of 3 years or less.	97 percent
		• GSE senior debt securities that mature within 60 days, excluding securities issued by the Farm Credit System.	95 percent
		• Diversified investment funds comprised exclusively of Level 1 instruments.	95 percent
Level 2 ...	.....	• Obligations of U.S. Government agencies with a final remaining maturity of more than 3 years.	97 percent
		• MBS that are fully guaranteed by a U.S. Government agency as to the timely repayment of principal and interest.	95 percent
		• Diversified investment funds comprised exclusively of Levels 1 and 2 instruments.	95 percent
Level 3 ...	.....	• GSE senior debt securities with maturities exceeding 60 days, excluding senior debt securities of the Farm Credit System.	93 percent for all Level 3 instruments
		• MBS that are fully guaranteed by a GSE as to the timely repayment of principal and interest.	
		• Money market instruments maturing within 90 days.	
		• Diversified investment funds comprised exclusively of levels 1, 2, and 3 instruments.	

(c) *Unencumbered.* All investments that a Farm Credit bank holds in its liquidity reserve and supplemental liquidity buffer in accordance with this section must be unencumbered. For the purpose of this section, an investment is unencumbered if it is free of lien, and it is not explicitly or implicitly pledged to secure, collateralize, or enhance the credit of any transaction. Additionally, an unencumbered investment held in the liquidity reserve cannot be used as a hedge against interest rate risk if liquidation of that particular investment would expose the bank to a material risk of loss.

(d) *Marketable.* All investments that a Farm Credit bank holds in its liquidity reserve in accordance with this section must be readily marketable. For the purposes of this section, an investment is marketable if it:

(1) Can be easily and quickly converted into cash with little or no loss in value;

(2) Exhibits low credit and market risks;

(3) Has ease and certainty of valuation; and

(4) Except for money market instruments, can be easily bought and sold in active and sizeable markets without significantly affecting prices.

(e) *Supplemental liquidity buffer.* Each Farm Credit bank must hold supplemental liquid assets in excess of the 90-day minimum liquidity reserve. The supplemental liquidity buffer must be comprised of cash and qualified eligible investments authorized by §615.5140 of this part. A Farm Credit bank must be able to liquidate any qualified eligible investment in its supplemental liquidity buffer within the liquidity policy timeframe established in the bank's liquidity policy at no less than 80 percent of its book value. A Farm Credit bank must remove from its supplemental liquidity buffer any investment that has, at any time, a market value that is less than 80 percent of its book value. Each investment in the supplemental liquidity buffer that has a market value of at least 80 percent of its book value, but does not qualify for Levels 1, 2, or 3 of the liquidity reserve, must be discounted to (multiplied by) 90 percent of its market value. The amount of supplemental liquidity that

each Farm Credit bank holds, at minimum, must meet the requirements of its board's liquidity policy, provide excess liquidity beyond the days covered by the liquidity reserve, and satisfy the applicable portions of the bank's CFP in accordance with paragraph (f).

(f) *Contingency Funding Plan (CFP).* The board of each Farm Credit bank must adopt a CFP to ensure sources of liquidity are sufficient to fund normal operations under a variety of stress events. Such stress events include, but are not limited to market disruptions, rapid increase in loan demand, unexpected draws on unfunded commitments, difficulties in renewing or replacing funding with desired terms and structures, requirements to pledge collateral with counterparties, and reduced market access. Each Farm Credit bank must maintain an adequate level of unencumbered and marketable assets in its liquidity reserve that can be converted into cash to meet its net liquidity needs for 30 days based on estimated cash inflows and outflows under an acute stress scenario. The board of directors must review and approve the CFP at least once every year and make adjustments to reflect changes in the bank's risk profile and market conditions. The CFP must:

(1) Be customized to the financial condition and liquidity risk profile of the bank and the board's liquidity risk tolerance policy.

(2) Identify funding alternatives that the Farm Credit bank can implement whenever access to funding is impeded, which must include, at a minimum, arrangements for pledging collateral to secure funding and possible initiatives to raise additional capital.

(3) Require periodic stress testing that analyzes the possible effects on the bank's cash inflows and outflows, liquidity position, profitability and solvency under a variety of stress scenarios.

(4) Establish a process for managing events that imperil the bank's liquidity, and assign appropriate personnel and implement executable action plans that carry out the CFP.

[78 FR 23455, Apr. 18, 2013; 78 FR 26701, May 8, 2013, as amended at 83 FR 27501, June 12, 2018]

§ 615.5136 Emergencies impeding normal access of Farm Credit banks to capital markets.

An emergency shall be deemed to exist whenever a financial, economic, agricultural, national defense, or other crisis could impede the normal access of Farm Credit banks to the capital markets. Whenever the Farm Credit Administration determines, after consultation with the Federal Farm Credit Banks Funding Corporation to the extent practicable, that such an emergency exists, the Farm Credit Administration Board may, in its sole discretion, adopt a resolution that:

(a) Modifies the amount, qualities, and types of eligible investments that Farm Credit banks are authorized to hold pursuant to § 615.5132 of this subpart;

(b) Modifies or waives the liquidity requirement(s) in § 615.5134 of this subpart; and/or

(c) Authorizes other actions as deemed appropriate.

[77 FR 66372, Nov. 5, 2012]

§ 615.5140 Eligible investments.

(a) *Farm Credit banks*—(1) *Investment eligibility criteria.* A Farm Credit bank may purchase an investment only if it satisfies the following investment eligibility criteria:

(i) The investment must be purchased and held for one or more investment purposes authorized in § 615.5132.

(ii) The investment must be one of the following:

(A) A non-convertible senior debt security;

(B) A money market instrument with a maturity of 1 year or less;

(C) A portion of an MBS or ABS that is fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency;

(D) A portion of an MBS or ABS that is fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE;

(E) The senior-most position of an MBS or ABS that a U.S. Government agency does not fully guarantee as to

the timely payment of principal and interest or a GSE does not fully and explicitly guarantee as to the timely payment of principal and interest, provided that the MBS satisfies the definition of ''mortgage related security'' in 15 U.S.C. 78c(a)(41);

(F) An obligation of an international or multilateral development bank in which the U.S. is a voting member; or

(G) Shares of a diversified investment fund registered under the Investment Company Act of 1940, if its portfolio consists solely of securities that satisfy paragraph (a)(1)(ii)(A), (B), (C), (D), (E), or (F) of this section, or are eligible under §615.5174. The investment company's risk and return objectives and use of derivatives must be consistent with the Farm Credit bank's investment policies.

(iii) At least one obligor of the investment must have very strong capacity to meet its financial commitment for the expected life of the investment. If any obligor whose capacity to meet its financial commitment is being relied upon to satisfy this requirement is located outside the U.S., either:

(A) That obligor's sovereign host country must have the highest or second-highest consensus Country Risk Classification (0 or 1) as published by the Organization for Economic Cooperation and Development (OECD) or be an OECD member that is unrated; or

(B) The investment must be fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency.

(iv) The investment must exhibit low credit risk and other risk characteristics consistent with the purpose or purposes for which it is held.

(v) The investment must be denominated in U.S. dollars.

(2) *Resecuritizations.* Notwithstanding any other provision of this section, System banks may *not* purchase resecuritizations (except when both principal and interest are fully and explicitly guaranteed by the U.S. Government or a GSE) without approval under paragraph (e) of this section.

(b) *Farm Credit associations*—(1) *Risk management investments.* Each Farm Credit System association, with the approval of its funding bank, may purchase and hold investments to manage risks. Each association must identify and evaluate how the investments that it purchases contributes to management of its risks. Only securities that are issued by, or are unconditionally guaranteed or insured as to the timely payment of principal and interest by, the United States Government or its agencies are investments that associations may acquire for risk management purposes under this paragraph (b).

(2) *Secondary market Government-guaranteed loans.* In addition to investing in the securities described in paragraph (b)(1) of this section, each Farm Credit System association may also manage risk by holding those portions of loans that:

(i) Lenders, which are not Farm Credit System institutions, originate and then sell in the secondary market; and

(ii) The United States Department of Agriculture fully and unconditionally guarantees or insures as to both principal and interest.

(3) *Risk management requirements.* Each association that purchases investments pursuant to paragraphs (b)(1) and (2) of this section must document how its investment activities contribute to managing risks as required by paragraph (b)(1) of this section. Such documentation must address and evidence that the association:

(i) Complies with §615.5133(a), (b), (c), (d), (e), (h), and (i). These investment management processes must be appropriate for the size, risk and complexity of the association's investment portfolio.

(ii) Complies with §615.5182 for investments that exhibit interest rate risk that could lead to significant declines in net income or in the market value of capital.

(iii) Assesses how these investments impact the association's overall credit risk profile and how these investment purchases aid in diversifying, hedging, or mitigating overall credit risk.

(iv) Considers and evaluates any other relevant factors unique to the association or to the nature of the investments that could affect the association's overall risk-bearing capacity,

including but not limited to management experience and capability to understand and manage unique risks in investments purchased.

(4) *Association investment portfolio limit.* The total amount of investments purchased and held under this section must not exceed 10 percent of the association's total outstanding loans. In computing this limit:

(i) Include in the numerator the daily (point-in-time) balance of all investments purchased and held under this section. Unless otherwise directed by FCA, associations must use the investment balance on the last business day of the quarter when calculating the numerator of the portfolio limit under this paragraph. For this calculation, value investments at amortized cost and accrued interest.

(ii) Include in the denominator the 90-day average daily balance of total outstanding loans as defined in § 615.5131. For this calculation, value loans at amortized cost and include accrued interest. The denominator does not include any allowance for loan loss adjustments.

(iii) Exclude from the numerator the following:

(A) Equity investments in unincorporated business entities authorized in § 611.1150 of this chapter;

(B) Equity investments in Rural Business Investment Companies organized under 7 U.S.C. 2009cc *et seq.;*

(C) Equity investments in Class B Farmer Mac stock authorized in § 615.5173; and

(D) Farmer Mac agricultural mortgage-backed securities under § 615.5174.

(5) *Funding bank supervision of association investments.* (i) The association must not purchase and hold investments without the funding bank's prior approval. The bank must review the association's prior approval requests and explain in writing its reasons for approving or denying the request. The prior approval is required before the association engages in investment activities and with any significant change(s) in investment strategy.

(ii) In deciding whether to approve an association's request to purchase and hold investments, the bank must evaluate and document that the association:

(A) Has adequate policies, procedures, and controls, in place for its investment accounting and reporting;

(B) Has capable staff with the necessary expertise to manage the risks in investments; and

(C) Complies with paragraph (b)(3) of this section.

(iii) The bank must review annually the investment portfolio of every association that it funds. This annual review must evaluate whether the association's investments manage risks over time, and the continued adequacy of the associations' risk management practices.

(6) *Transition for association investments.* (i) An association is not required to divest of any investment held on January 1, 2019 that was authorized under § 615.5140 as contained in 12 CFR part 615 revised as of January 1, 2018 or otherwise by official written FCA action that allowed the association to continue to hold such investment. Once such investment matures, the association must not renew it unless the investment is authorized pursuant to this section.

(ii) No association is required to divest of investments if a decline in total outstanding loans causes it to exceed the portfolio limit in paragraph (b)(4) of this section. However, the institution must not purchase new investments unless, after they are purchased, the total amount of investments held falls within the portfolio limit.

(c) *Reservation of authority.* FCA may, on a case-by-case basis, determine that a particular investment you are holding poses inappropriate risk, notwithstanding that it satisfies the investment eligibility criteria. If so, we will notify you as to the proper treatment of the investment.

(d) [Reserved]

(e) *Other investments approved by FCA.* You may purchase and hold investments that we approve. Your request for our approval must explain the risk characteristics of the investment and your purpose and objectives for making the investment.

[83 FR 27502, June 12, 2018; 83 FR 30833, July 2, 2018, as amended at 85 FR 62949, Oct. 6, 2020; 85 FR 70955, Nov. 6, 2020]

§615.5142 [Reserved]

§615.5143 Management of ineligible investments and reservation of authority to require divestiture.

(a) *Investments ineligible when purchased*. Investments that do not satisfy the eligibility criteria set forth in §615.5140(a) or (b) or investments FCA had not approved under §615.5140(e), as applicable, at the time of purchase are ineligible. System institutions must not purchase ineligible investments. If the institution determines that it has purchased an ineligible investment, it must notify FCA within 15 calendar days after the determination. The institution must divest of the investment no later than 60 calendar days after determining that the investment is ineligible unless FCA approves, in writing, a plan that authorizes the institution to divest the investment over a longer period. Until the institution divests of the ineligible investment:

(1) A Farm Credit bank must not use the ineligible investment to satisfy its liquidity requirement(s) under §615.5134;

(2) The institution must include the ineligible investment in the portfolio limit calculation defined in §615.5132 or §615.5140(b)(4), as applicable; and

(3) A Farm Credit bank must exclude the ineligible investment as collateral under §615.5050.

(b) *Investments that no longer satisfy investment eligibility criteria*. If the institution determines that an investment (that satisfied the eligibility criteria set forth in §615.5140(a) or (b), as applicable, when purchased) no longer satisfies the criteria, or that an investment that FCA approved pursuant to §615.5140(e), no longer satisfies the conditions of approval, the institution may continue to hold the investment, subject to the following requirements:

(1) The institution must notify FCA within 15 calendar days after such determination;

(2) A Farm Credit bank must not use the ineligible investment to satisfy its liquidity requirement(s) under §615.5134;

(3) The institution must include the ineligible investment in the portfolio limit calculation defined in §615.5132 or §615.5140(b)(4), as applicable;

(4) A Farm Credit bank may continue to include the investment as collateral under §615.5050 at the lower of cost or market value; and

(5) The institution must develop a plan to reduce the investment's risk to the institution.

(c) *Reservation of authority*. FCA retains the authority to require the institution to divest of any investment at any time for failure to comply with §615.5132(a) or §615.5140(a), (b), or (e), or for safety and soundness reasons. The timeframe set by FCA will consider the expected loss on the transaction (or transactions) and the effect on the institution's financial condition and performance.

[83 FR 27503, June 12, 2018; 83 FR 30833, July 2, 2018]

§615.5144 Banks for cooperatives and agricultural credit banks.

As may be authorized by the banks for cooperatives' or agricultural credit banks boards of directors ownership investment may be made in foreign business entities solely for the purpose of obtaining credit information and other services needed to facilitate transactions which may be financed under section 3.7(b) of the Farm Credit Act Amendments of 1980. Such an investment shall not exceed the level required to access credit and other services of the entity and shall not be made for earnings purposes. The business entity shall be deemed to be principally engaged in providing credit information to and performing such servicing functions for its members where such activities constitute a materially important line of business to its members. Also, investments must be made by a bank for cooperatives or agricultural credit bank for its own account and not on behalf of its members. The bank for cooperatives or agricultural credit bank shall use only those services provided by the business entity as necessary to facilitate transactions authorized by section 3.7(b) of the Farm Credit Act Amendments of 1980.

[46 FR 55088, Nov. 6, 1981, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989; 61 FR 67187, Dec. 20, 1996. Redesignated at 64 FR 28899, May 28, 1999]

Subpart F—Property, Transfers of Capital, and Other Investments

§ 615.5170 Real and personal property.

Real estate and personal property may be acquired, held, or disposed of by any Farm Credit institution for the necessary and normal operations of its business. The purchase, lease, or construction of office quarters shall be limited to facilities reasonably necessary to meet the foreseeable requirements of the institution. Property shall not be acquired if it involves, or appears to involve, a bank or association in the real estate or other unrelated business.

[50 FR 48554, Nov. 26, 1985. Redesignated at 58 FR 63056, Nov. 30, 1993, and amended at 60 FR 20011, Apr. 24, 1995]

§ 615.5171 Transfer of capital from banks to associations.

(a) *Definitions for this section*—(1) *Transfer of capital* means any payment or forbearance by a Farm Credit Bank or agricultural credit bank (collectively, bank) to an affiliated association, including but not limited to:

(i) The purchase of nonvoting stock or participation certificates;

(ii) The payment of cash;

(iii) Debt forgiveness or reduction;

(iv) Interest rate concessions or interest-free loans;

(v) The transfer of loans at other than fair market value;

(vi) The reduction or elimination of standard loan servicing or other fees; and

(vii) The assumption of operating or other expenses, such as legal fees or insurance premiums.

(2) *Preferential transfer of capital* means a transfer of capital that is not available to all similarly situated affiliated associations.

(3) *Nonroutine transfer of capital* means a transfer of capital that is not available in the ordinary course of business.

(b) *Considerations for preferential or nonroutine transfers of capital.* Before authorizing a preferential or nonroutine transfer of capital, a bank board of directors must take into account and document whether:

(1) The transfer of capital is in the best interests of all of the shareholders;

(2) The bank will be able to achieve its capital adequacy and business plan goals after making the transfer of capital; and

(3) The transfer of capital is the ''least cost'' alternative available and will enable the association to maintain sound, adequate, and constructive service to borrowers.

(c) *Notification requirements.* At least 30 days before making a preferential or nonroutine transfer of capital to an affiliated association, banks must provide shareholders and the Chief Examiner of the Farm Credit Administration with a description of the transfer and the documentation required by paragraph (b) of this section.

[64 FR 49961, Sept. 15, 1999]

§ 615.5172 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.

(a) In accordance with policies prescribed by the board of directors of the Farm Credit Bank or agricultural credit bank and each production credit association and agricultural credit association (hereinafter association(s)), such association(s) may invest in notes, conditional sales contracts, and other similar obligations given to cooperatives and private dealers by farmers and ranchers eligible to borrow from such associations.

(b) Such notes and other obligations evidencing purchases of farm machinery, supplies, equipment, home appliances, and other items of a capital nature handled by cooperatives and private dealers will be eligible for purchase as investments.

(c) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of its loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount which an association may invest in such obligations that are originated by any one cooperative or private dealer, at any one time, shall not exceed 50 percent of association capital and surplus.

(d) All notes in which an association invests shall be endorsed with full recourse against the cooperative or dealer. The association shall contact each notemaker who meets the association's credit standards to encourage him to become a borrower.

[54 FR 1158, Jan. 12, 1989, as amended at 55 FR 24888, June 19, 1990; 55 FR 38313, Sept. 18, 1990. Redesignated at 58 FR 63056, Nov. 30, 1993]

§615.5173 Stock of the Federal Agricultural Mortgage Corporation.

Banks and associations of the Farm Credit System are authorized to purchase and hold Class B common stock of the Federal Agricultural Mortgage Corporation pursuant to section 8.4 of the Farm Credit Act.

[58 FR 63058, Nov. 30, 1993]

§615.5174 Farmer Mac securities.

(a) *General authority*. You may purchase and hold mortgage securities that are issued or guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation (Farmer Mac securities). You may purchase and hold Farmer Mac securities for the purposes of managing credit and interest rate risks, and furthering your mission to finance agriculture. The total value of your Farmer Mac securities cannot exceed your total outstanding loans, as defined by §615.5131.

(b) *Board and management responsibilities*. Your board of directors must adopt written policies that will govern your investments in Farmer Mac securities. All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for managing your investments in Farmer Mac securities. The board of directors must also ensure that appropriate internal controls are in place to prevent loss, in accordance with §615.5133(e). Management must submit quarterly reports to the board of directors on the performance of all investments in Farmer Mac securities. Annually, your board of directors must review these policies and the performance of your Farmer Mac securities and make any changes that are needed.

(c) *Policies*. Your board of directors must establish investment policies for Farmer Mac securities that include your:

(1) *Objectives* for holding Farmer Mac securities.

(2) *Credit risk* parameters including:

(i) The quantities and types of Farmer Mac mortgage securities that are collateralized by qualified agricultural mortgages, rural home loans, and loans guaranteed by the Farm Service Agency.

(ii) Product and geographic diversification for the loans that underlie the security; and

(iii) Minimum pool size, minimum number of loans in each pool, and maximum allowable premiums or discounts on these securities.

(3) *Liquidity risk* tolerance and the liquidity characteristics of Farmer Mac securities that are suitable to meet your institutional objectives. A bank may not include Farmer Mac mortgage securities in the liquidity reserve maintained to comply with §615.5134.

(4) *Market risk* limits based on the effects that the Farmer Mac securities have on your capital and earnings.

(d) *Stress test*. You must perform stress tests, in accordance with §615.5133(h)(1)(iii) and (h)(4), on mortgage securities, issued or guaranteed by Farmer Mac, that are backed by loans that you did not originate.

(e) *You*. Means a Farm Credit bank, association, or service corporation.

[64 FR 28899, May 28, 1999, as amended at 70 FR 51590, Aug. 31, 2005; 77 FR 66374, Nov. 5, 2012; 83 FR 27503, June 12, 2018]

§615.5175 Investments in Farm Credit System institution preferred stock.

Except as provided for in §615.5171, Farm Credit banks, associations and service corporations may only purchase preferred stock issued by another Farm Credit System institution, including the Federal Agricultural Mortgage Corporation, with the written prior approval of the Farm Credit Administration. The request for approval should explain the terms and risk characteristics of the investment and the purpose and objectives for making the investment.

[70 FR 53908, Sept. 13, 2005]

Subpart G—Risk Assessment and Management

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

§ 615.5180 Bank interest rate risk management program.

(a) The board of directors of each Farm Credit bank must develop, implement, and effectively oversee an interest rate risk management program tailored to the needs of the institution. The program must establish a risk management process that effectively identifies, measures, monitors, and controls interest rate risk. The board of directors of each Farm Credit bank must be knowledgeable of the nature and level of interest rate risk taken by the institution.

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

(c) The board of directors of each Farm Credit bank must adopt an interest rate risk management section of an asset/liability management policy that establishes interest rate risk exposure limits as well as the criteria to determine compliance with these limits. At a minimum, the interest rate risk management section must establish policies and procedures for the bank to:

(1) Address the purpose and objectives of interest rate risk management;

(2) Identify and analyze the causes of risks within its existing balance sheet structure;

(3) Measure the potential effect of these risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis and by considering the effect of investments on interest rate risk based on the results of the stress testing required under § 615.5133(h)(4);

(4) Describe and implement actions needed to obtain its desired risk management objectives;

(5) Identify exception parameters and approvals needed for any exceptions to the requirements of the board's policies;

(6) Describe delegations of authority;

(7) Describe reporting requirements, including exceptions to limits contained in the board's policies;

(8) Consider the nature and purpose of derivative contracts and establish counterparty risk thresholds and limits for derivatives.

(d) At least quarterly, management of each Farm Credit bank must report to its board of directors, or a designated committee of the board, describing the nature and level of interest rate risk exposure. Any deviations from the board's policy on interest rate risk must be specifically identified in the report and approved by the board or designated committee of the board.

[77 FR 66374, Nov. 5, 2012, as amended at 83 FR 27503, June 12, 2018]

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

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

[77 FR 66375, Nov. 5, 2012]

Subpart H—Capital Adequacy

SOURCE: 53 FR 39247, Oct. 6, 1988, unless otherwise noted.

§ 615.5200 Capital planning.

(a) The Board of Directors of each System institution shall determine the amount of regulatory capital needed to assure the System institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum capital standards specified in this part and part 628 of this chapter are not meant to be adopted as the optimal capital level in the System institution's capital adequacy plan. Rather, the standards are intended to serve as minimum

levels of capital that each System institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) Each Board of Directors shall establish, adopt, and maintain a formal written capital adequacy plan as a part of the financial plan required by §618.8440 of this chapter. The plan shall include the capital targets that are necessary to achieve the System institution's capital adequacy goals as well as the minimum permanent capital, common equity tier 1 (CET1) capital, tier 1 capital, total capital, and tier 1 leverage ratios (including the unallocated retained earnings (URE) and URE equivalents minimum) standards. The plan shall expressly acknowledge the continuing and binding effect of all board resolutions adopted in accordance with §628.20(b)(1)(xiv), (c)(1)(xiv), and (d)(1)(xi) of this chapter, and with §628.21 of this chapter. The plan shall address any projected dividend payments, patronage payments, equity retirements, or other action that may decrease the System institution's capital or the components thereof for which minimum amounts are required by this part and part 628 of this chapter. The plan shall set forth the circumstances and minimum timeframes in which equities may be redeemed or revolved consistent with the System institution's applicable bylaws or board of directors' resolutions.

(c) In addition to factors that must be considered in meeting the minimum standards, the board of directors shall also consider at least the following factors in developing the capital adequacy plan:

(1) Capability of management and the board of directors (the assessment of which may be a part of the assessments required in paragraphs (b)(2)(ii) and (b)(7)(i) of §618.8440 of this chapter);

(2) Quality of operating policies, procedures, and internal controls;

(3) Quality and quantity of earnings;

(4) Asset quality and the adequacy of the allowance for losses to absorb potential loss within the loan and lease portfolios;

(5) Sufficiency of liquid funds;

(6) Needs of a System institution's customer base; and

(7) Any other risk-oriented activities, such as funding and interest rate risks, potential obligations under joint and several liability, contingent and off-balance-sheet liabilities or other conditions warranting additional capital.

[86 FR 54356, Oct. 1, 2021]

§615.5201 Definitions.

For the purpose of this subpart, the following definitions apply:

Allocated investment means earnings allocated but not paid in cash by a System bank to an association or other recipient.

Deferred tax assets (DTAs) means an amount of income taxes refundable or recoverable in future years as a result of temporary differences and net operating loss or tax credit carryforwards that exist at the reporting date. There are three types of DTAs and they arise from:

(1) A temporary difference that a System institution could realize through a net loss carryback;

(2) A temporary difference that a System institution could not realize through net loss carryback; and

(3) An operating loss and tax credit carryforward.

Nonagreeing association means an association that does not have an allotment agreement in effect with a Farm Credit Bank or agricultural credit bank pursuant to §615.5207(b)(2).

Permanent capital, subject to adjustments as described in §615.5207, includes:

(1) Current year earnings;

(2) Allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, must be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(3) All surplus;

(4) Stock issued by a System institution, except:

(i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder;

(ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk;

(iii) Farm Credit Bank equities required to be purchased by Federal land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(iv) Capital subject to revolvement, unless:

(A) The bylaws of the System institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time; and

(B) The System institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board of directors in accordance with statutory and regulatory requirements and that the institution does not grant any express or implied right to have such capital retired at the end of the revolvement cycle or at any other time;

(5) [Reserved]

(6) Financial assistance provided by the Farm Credit System Insurance Corporation that the FCA determines appropriate to be considered permanent capital; and

(7) Any other debt or equity instruments or other accounts the FCA has determined are appropriate to be considered permanent capital. The FCA may permit one or more System institutions to include all or a portion of such instrument, entry, or account as permanent capital, permanently or on a temporary basis, for purposes of this part.

Preferred stock means stock that is permanent capital and has dividend and/or liquidation preference over common stock.

Risk-adjusted asset base means ''standardized total risk-weighted assets'' as defined in § 628.2 of this chapter, adjusted in accordance with § 615.5207 and excluding the deduction in paragraph (2) of that definition for the amount of the System institution's allowance for loan losses that is not included in tier 2 capital.

Stock means stock and participation certificates.

System bank means a Farm Credit bank as defined in § 619.9140 of this chapter, which includes Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

System institution means a System bank, an association of the Farm Credit System, and their successors, and any other institution chartered by the Farm Credit Administration (FCA) that the FCA determines should be considered a System institution for the purposes of this subpart.

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

[81 FR 49773, July 28, 2016, as amended at 86 FR 54356, Oct. 1, 2021]

§ 615.5205 Minimum permanent capital standards.

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

[62 FR 4446, Jan. 30, 1997]

§ 615.5206 Permanent capital ratio computation.

(a) The System institution's permanent capital ratio is determined on the basis of the financial statements of the System institution prepared in accordance with generally accepted accounting principles.

(b) The System institution's asset base and permanent capital are computed using average daily balances for the most recent 3 months.

(c) The System institution's permanent capital ratio is calculated by dividing the System institution's permanent capital, adjusted in accordance with § 615.5207 (the numerator), by the risk-adjusted asset base (the denominator) as defined in § 615.5201, to derive a ratio expressed as a percentage.

[81 FR 49774, July 28, 2016]

§615.5207 Capital adjustments and associated reductions to assets.

For the purpose of computing the System institution's permanent capital ratio, the following adjustments must be made prior to assigning assets to risk-weight categories and computing the ratio:

(a) Where two System institutions have stock investments in each other, such reciprocal holdings must be eliminated to the extent of the offset. If the investments are equal in amount, each System institution must deduct from its assets and its permanent capital an amount equal to the investment. If the investments are not equal in amount, each System institution must deduct from its permanent capital and its assets an amount equal to the smaller investment. The elimination of reciprocal holdings required by this paragraph must be made prior to making the other adjustments required by this section.

(b) Where an association has an equity investment in a System bank, the double counting of capital is eliminated in the following manner:

(1) For a purchased investment, each association must deduct its investment in a System bank from its permanent capital. Each System bank will consider all purchased stock investments as its permanent capital.

(2) For an allocated investment, each System bank and each of its affiliated associations may enter into an agreement that specifies, for computing permanent capital only, a dollar amount and/or percentage allotment of the association's allocated investment between the bank and the association. Section 615.5208 provides conditions for allotment agreements or defines allotments in the absence of such agreements.

(c) A Farm Credit Bank or agricultural credit bank and a recipient, other than an affiliated association, of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement must comply with §615.5208, except that, in the absence of an agreement, the allocated investment must be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of the bank that are purchased by a recipient are considered as permanent capital of the issuing bank.

(d) A bank for cooperatives and a recipient of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement must comply with §615.5208, except that, in the absence of an agreement, the allocated investment must be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of a bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(e) Where a System institution has an equity investment in another System institution to capitalize a loan participation interest, the investing System institution must deduct from its permanent capital an amount equal to its investment in the participating System institution.

(f) Each System institution must deduct from permanent capital any equity investment in a service corporation chartered under section 4.25 of the Act or the Funding Corporation chartered under section 4.9 of the Act.

(g) Each System institution must deduct from its permanent capital an amount equal to all goodwill, whenever acquired.

(h) Each System institution must deduct from its risk-adjusted asset base any item deducted from permanent capital under this section.

(i) Where a System bank and an association have an enforceable written agreement to share losses on specifically identified assets on a predetermined quantifiable basis, such assets must be counted in each System institution's risk-adjusted asset base in the same proportion as the System institutions have agreed to share the loss.

(j) The permanent capital of a System institution must exclude any accumulated other comprehensive income (loss) as reported under GAAP.

(k) For purposes of calculating capital ratios under this part, deferred-tax assets are subject to the conditions,

limitations, and restrictions described in § 628.22(a)(3) of this chapter.

(l) [Reserved]

[81 FR 49774, July 28, 2016]

§ 615.5208 Allotment of allocated investments.

(a) The following conditions apply to agreements that a System bank enters into with an affiliated association pursuant to § 615.5207(b)(2):

(1) The agreement must be for a term of 1 year or longer.

(2) The agreement must be entered into on or before its effective date.

(3) The agreement may be amended according to its terms, but no more frequently than annually except in the event that a party to the agreement is merged or reorganized.

(4) On or before the effective date of the agreement, a certified copy of the agreement, and any amendments thereto, must be sent to the field office of the Farm Credit Administration responsible for examining the System institution. A copy must also be sent within 30 calendar days of adoption to the bank's other affiliated associations.

(5) Unless the parties otherwise agree, if the System bank and the association have not entered into a new agreement on or before the expiration of an existing agreement, the existing agreement will automatically be extended for another 12 months, unless either party notifies the Farm Credit Administration in writing of its objection to the extension prior to the expiration of the existing agreement.

(b) In the absence of an agreement between a System bank and one or more associations, or in the event that an agreement expires and at least one party has timely objected to the continuation of the terms of its agreement, the following formula applies with respect to the allocated investments held by those associations with which there is no agreement (nonagreeing associations), and does not apply to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(1) The allotment formula must be calculated annually.

(2) The permanent capital ratio of the System bank must be computed as of the date that the existing agreement terminates, using a 3-month average daily balance, excluding the allocated investment from nonagreeing associations but including any allocated investments of agreeing associations that are allotted to the bank under applicable allocation agreements. The permanent capital ratio of each nonagreeing association must be computed as of the same date using a 3-month average daily balance, and must be computed excluding its allocated investment in the bank.

(3) If the permanent capital ratio of the System bank calculated in accordance with paragraph (b)(2) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with paragraph (b)(2) of this section is 7 percent or above must be allotted 50 percent to the bank and 50 percent to the association.

(4) If the permanent capital ratio of the System bank calculated in accordance with paragraph (b)(2) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose capital ratio is below 7 percent must be allotted to the association until the association's capital ratio reaches 7 percent or until all of the investment is allotted to the association, whichever occurs first. Any remaining unallotted allocated investment must be allotted 50 percent to the bank and 50 percent to the association.

(5) If the permanent capital ratio of the System bank calculated in accordance with paragraph (b)(2) of this section is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital ratio of 7 percent must be determined, and an amount of the allocated investment of each nonagreeing association must be allotted to the System bank, as follows:

(i) If the total of the allocated investments of all nonagreeing associations is greater than the additional capital needed by the bank, the allocated investment of each nonagreeing association must be multiplied by a fraction

whose numerator is the amount of capital needed by the bank and whose denominator is the total amount of allocated investments of the nonagreeing associations, and such amount must be allotted to the bank. Next, if the permanent capital ratio of any nonagreeing association is less than 7 percent, a sufficient amount of unallotted allocated investment must then be allotted to each nonagreeing association, as necessary, to increase its permanent capital ratio to 7 percent, or until all such remaining investment is allotted to the association, whichever occurs first. Any unallotted allocated investment still remaining must be allotted 50 percent to the bank and 50 percent to the nonagreeing association.

(ii) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the remaining allocated investments of the nonagreeing associations must be allotted to the bank.

[81 FR 49774, July 28, 2016]

§§ 615.5209–615.5212 [Reserved]

§ 615.5215 Distribution of earnings.

The boards of directors of System institutions may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities except retirements pursuant to §§ 615.5280 and 615.5290 if, after or due to the action, the permanent capital of the institution would fail to meet the minimum permanent capital adequacy standard established under § 615.5205 for that period. This limitation shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital at the issuing institution. Any System institution subject to Federal income tax may pay patronage refunds partially in cash if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

[53 FR 39247, Oct. 6, 1988, as amended at 53 FR 40046, Oct. 13, 1988]

§ 615.5216 [Reserved]

Subpart I—Issuance of Equities

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

§ 615.5220 Capitalization bylaws.

(a) The board of directors of each System bank and association shall, pursuant to section 4.3A of the Farm Credit Act of 1971 (Act), adopt capitalization bylaws, subject to the approval of its voting shareholders, that set forth:

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

(2) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(3) The number of shares and par value of equities authorized to be issued for each class of equities. However, the bylaws need not state a number or value limit for these equities:

(i) Equities that are required to be purchased as a condition of obtaining a loan, lease, or related service.

(ii) Non-voting stock resulting from the conversion of voting stock due to repayment of a loan.

(iii) Non-voting equities that are issued to an association's funding bank in conjunction with any agreement for a transfer of capital between the association and the bank.

(iv) Equities resulting from the distribution of earnings.

(4) For Farm Credit Banks, agricultural credit banks (with respect to loans other than to cooperatives), and associations, the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement) that will be required to be purchased as a condition for obtaining a loan, which amount shall be not less

than 2 percent of the loan amount or $1,000, whichever is less;

(5) For banks for cooperatives and agricultural credit banks (with respect to loans to cooperatives), the percentage or dollar amount of equity or guaranty fund investment (which may be expressed as a range within which the board may from time to time determine the requirement) that serves as a target level of investment in the bank for patronage-sourced business, which amount shall not be less than, 2 percent of the loan amount or $1,000, whichever is less;

(6) The manner in which equities will be retired, including a provision stating that equities other than those protected under section 4.9A of the Act are retireable at the sole discretion of the board, provided minimum capital adequacy standards established by the Farm Credit Administration, and the capital requirements established by the board of directors of the System institution, are met;

(7) The manner in which earnings will be allocated and distributed, including the basis on which patronage will be paid, which shall be in accord with cooperative principles; and

(8) For System banks, the manner in which the capitalization requirements of the Farm Credit bank shall be allocated and equalized from time to time among its owners.

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

[81 FR 49775, July 28, 2016, as amended at 86 FR 54357, Oct. 1, 2021]

§ 615.5230 Implementation of cooperative principles.

(a) Voting stockholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles, including those set forth in § 611.350 of this chapter. Except as otherwise required by statute or regulation, and except as modified by paragraphs (b) and (c) of this section, the voting rights of each voting shareholder are as follows:

(1) Each voting stockholder of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders and has the right to vote in the election of each stockholder-elected director and to cumulate such votes and distribute them among the candidates in the stockholder's discretion, except that cumulative voting for directors may be eliminated if 75 percent of the associations that are stockholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association shall be accorded one vote.

(2) Each voting stockholder of an agricultural credit bank has only one vote, unless another voting scheme has been approved by the Farm Credit Administration.

(3) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding. Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(b), each voting stockholder of an association or bank for cooperatives has the right to vote in the election of each stockholder-elected director. Unless otherwise provided in the capitalization bylaws, each voting stockholder of an association or bank for cooperatives is allowed to cumulate such votes and distribute them among the candidates in the stockholder's discretion. Cumulative voting is not allowed in the regional election of stockholder-elected directors.

(b) The regional election of stockholder-elected directors is only permitted under the following conditions:

(1) A bylaw establishing regional elections is approved by a majority of voting stockholders, voting in person or by proxy, prior to implementation.

(2) The bylaw provides that the use of regional election of stockholder-elected directors does not prevent all voting stockholders of the institution, regardless of the region where they reside or

conduct agricultural or aquatic operations, from voting in any stockholder vote to remove a director.

(3) There are an approximately equal number of voting stockholders in each of the institution's voting regions. Regions will have an approximately equal number of voting stockholders if the number of voting stockholders in any one region does not exceed the number of voting stockholders in any other region by more than 25 percent. At least once every 3 years, the institution must count the number of voting stockholders in each region and, if the regions do not have an approximately equal number of stockholders, the regional boundaries must be adjusted to achieve such result.

(4) An institution may provide for more than one director to represent a region. Institutions providing for more than one director to represent a region will determine the equitability of the regions by dividing the number of voting stockholders in that region by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting stockholders in other regions.

(5) Each voting stockholder is accorded the right to vote in the election of each stockholder-elected director for his or her region.

(c) Each equityholder of each institution shall be equitably treated in the operation of the institution.

(1) Each issuance of preferred stock (other than preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares voting of each class of equities adversely affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

(2) Any dividends paid to the holders of common stock and participation certificates shall be on a per share basis and without preference as to rate or priority of payment between classes of common stock, between classes of participation certificates, between classes of common stock and classes of participation certificates, or between holders of the same class of stock or participation certificates, except that any class of common stock or participation certificates that result from the conversion of allocated surplus may be subordinated to other classes of common stock and participation certificates in the payment of dividends.

(3) Any patronage refunds that are paid shall be paid in accordance with cooperative principles, on an equitable and nondiscriminatory basis determined by the board of directors in accordance with the capitalization bylaws, provided that any earning pools that may be established for the payment of patronage shall be established on a rational and equitable basis that will ensure that each patron of the institution receives its fair share of the earnings of the institution and bears its fair share of the expenses of the institution.

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to impairment and restoration of impairment and have the same rights and priority upon liquidation.

[53 FR 40046, Oct. 13, 1988, as amended at 54 FR 6118, Feb. 8, 1989; 60 FR 57921, Nov. 24, 1995; 62 FR 4446, Jan. 30, 1997; 62 FR 49908, Sept. 24, 1997; 63 FR 39228, July 22, 1998; 70 FR 53908, Sept. 13, 2005; 71 FR 5763, Feb. 2, 2006; 75 FR 18743, Apr. 12, 2010]

§615.5240 Regulatory capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the capital adequacy standards established under subpart H of this part, part 628 of this chapter, and the capital requirements established by the board of directors of the System institution.

(b) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) Retirement must be solely at the discretion of the board of directors and not upon a date certain (other than the original maturity date of preferred stock) or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

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

(3) The institution must have made the disclosures required by this subpart;

(4) For common stock and participation certificates, dividends must be noncumulative and payable only at the discretion of the board; and

(5) For cumulative preferred stock, the board of directors must have discretion to defer payment of dividends.

[81 FR 49776, July 28, 2016]

§ 615.5245 Limitations on association preferred stock.

(a) The board of directors of each association offering preferred stock must adopt a policy that addresses the association's conditions or limits on the amount of preferred stock that any one holder, or small number of holders may acquire.

(b) Each association offering preferred stock must make the stock available for purchase to each of its members on the same basis.

(c) An association may not extend credit for purchases of preferred stock in the association.

[70 FR 53908, Sept. 13, 2005]

§ 615.5250 Disclosure requirements for sales of borrower stock.

(a) For sales of borrower stock, which for this subpart means equities purchased as a condition for obtaining a loan, a System institution must provide a prospective borrower with the following documents prior to loan closing:

(1) The institution's most recent annual report filed under part 620 of this chapter;

(2) The institution's most recent quarterly report filed under part 620 of this chapter, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued. In addition to specific terms and conditions, the description must disclose:

(i) That the equity is an at-risk investment and not a compensating balance;

(ii) That the equity is retireable only at the discretion of the board of directors consistent with the institution's bylaws and only if minimum capital standards established under subpart H of this part and part 628 of this chapter are met and that such retirement may also require the approval of the FCA;

(iii) Whether the institution presently meets its minimum capital standards established under subpart H of this part and part 628 of this chapter;

(iv) Whether the institution knows of any reason the institution may not meet its capital standards on the next earnings distribution date; and

(v) The rights, if any, to share in patronage payments.

(b) Notwithstanding the provisions of paragraph (a) of this section, no materials previously provided to a purchaser (except the disclosures required by paragraph (a)(4) of this section) need be provided again unless the purchaser requests such materials.

[81 FR 49776, July 28, 2016]

§ 615.5255 Disclosure and review requirements for sales of other equities.

(a) A bank, association, or service corporation must submit a proposed disclosure statement to the Farm Credit Administration (FCA) for review and clearance prior to the proposed sale of any other equities, which for this subpart means equities not purchased as a condition for obtaining a loan.

(b) An institution may not offer to sell other equities until a disclosure statement is reviewed and cleared by the FCA.

(c) A disclosure statement must include:

(1) All of the information required by parts 620 and 628 of this chapter in the annual report to shareholders as of a date within 135 days of the proposed sale. An institution may satisfy this requirement by referring to its most recent annual report to shareholders and the most recent quarterly report filed with the FCA, provided such reports contain the required information;

(2) The information required by § 615.5250(a)(3) and (4); and

(3) A discussion of the intended use of the sale proceeds.

(d) An institution is not required to provide the materials identified in paragraphs (c)(1) and (2) of this section to a purchaser who previously received them unless the purchaser requests it.

(e) For any class of stock where each purchaser and each subsequent transferee acquires at least $250,000 of the stock and meets the definition of ''accredited investor'' or ''qualified institutional buyer'' contained in 17 CFR 230.501 and 230.144A, a disclosure statement submitted pursuant to this section is deemed reviewed and cleared by the FCA and an institution may treat stock that meets all requirements of this part as permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H of this part, unless the FCA notifies the institution to the contrary within 30 days of receipt of a complete disclosure statement submission. A complete disclosure statement submission includes the proposed disclosure statement plus any additional materials requested by the FCA.

(f) For all other issuances, a disclosure statement submitted pursuant to this section is deemed cleared by the FCA, and an institution may treat stock that meets all requirements of this part as permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H unless the FCA notifies the institution to the contrary within 60 days of receipt of a complete disclosure statement submission. A complete disclosure statement submission includes the proposed disclosure statement plus any additional materials requested by the FCA.

(g) Upon request, the FCA will inform the institution how it will treat the proposed issuance for other regulatory capital ratios or computations.

(h) No institution, officer, director, employee, or agent shall, in connection with the sale of equities, make any disclosure, through a disclosure statement or otherwise, that is inaccurate or misleading, or omit to make any statement needed to prevent other disclosures from being misleading.

(i) Each bank and association must establish a method to disclose and make information on insider preferred stock purchases and retirements readily available to the public. At a minimum, each institution offering preferred stock must make this information available upon request.

(j) The requirements of this section do not apply to the sale of Farm Credit System institution equities to:

(1) Other Farm Credit System institutions;

(2) Other financing institutions in connection with a lending or discount relationship; or

(3) Non-Farm Credit System lenders that purchase equities in connection with a loan participation transaction.

(k) In addition to the requirements of this section, each institution is responsible for ensuring its compliance with all applicable Federal and state securities laws.

[81 FR 49776, July 28, 2016]

Subpart J—Retirement of Equities and Payment of Dividends

§615.5260 Retirement of eligible borrower stock.

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

(1) *Eligible borrowers stock* means:

(i) Stock, participation certificates or allocated equities outstanding on January 6, 1988, or purchased as a condition of obtaining a loan prior to the earlier of the date of shareholder approval of capitalization bylaws under section 4.3A of the Act or October 6, 1988; and

(ii) Any stock, participation certificates or allocated equities for which such eligible borrower stock is exchanged in connection with a merger, consolidation, or other reorganization or a transfer of territory. *Eligible borrower stock* does not include equities for which eligible borrower stock is required to be exchanged pursuant to the bylaws adopted under section 4.3A or equities for which eligible borrower stock is voluntarily exchanged except in connection with a merger, consolidation or other reorganization or a transfer of territory.

(2) *Retirement in the ordinary course of business* means:

(i) Retirement upon repayment of a loan or under a retirement or revolvement plan in effect prior to

January 6, 1988, and for eligible borrower stock issued after that date, at the time the loan was made; or

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

(3) *Par value* means:

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

(ii) In the case of participation certificates and other equities, face or equivalent value; or

(iii) In the case of participation certificates and allocated surplus subject to retirement under a revolving cycle and retired out or order pursuant to §§ 615.5280 and 615.5290 or otherwise under the Act, par or face value discounted at a rate determined by the institution to reflect the present value of the equity as of the date of such retirement.

(b) When an institution retires eligible borrower stock in the ordinary course of business, such equities shall be retired at par, even if book value is less than par.

(c) When a Farm Credit Bank retires stock for the sole purpose of enabling an association to retire eligible borrower stock that was issued in connection with a long term real estate loan, such stock shall be retired at par even if its book value is less than par.

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

§ 615.5270 Retirement of other equities.

(a) Equities other than eligible borrower stock shall be retired at not more than their book value.

(b) Subject to the redemption restrictions in part 628 of this chapter, no equities shall be retired, except pursuant to §§ 615.5280 and 615.5290 or term stock at its stated maturity, unless after retirement the institution would continue to meet the minimum permanent capital standards established under subpart H of this part, part 628 of this chapter, and the capital requirements established by the board of directors of the System institution.

(c) A System bank, association, or service corporation board of directors may delegate authority to retire at-risk stock to institution management if:

(1) The board has determined that the institution's capital position is adequate;

(2) All retirements are in accordance with applicable provisions of part 628 of this chapter and the institution's capital adequacy plan or capital restoration plan;

(3) After any retirements, the institution's permanent capital ratio will be in excess of 9 percent, its capital conservation buffer set forth in § 628.11 of this chapter will be above 2.5 percent, and its leverage buffer set forth in § 628.11 of this chapter will be above 1.0 percent;

(4) The institution will continue to satisfy all applicable regulatory capital standards after any retirements; and

(5) Management reports the aggregate amount and net effect of stock purchases and retirements to the board of directors each quarter.

(d) Each board of directors of a System bank, association, or service corporation that issues preferred stock must adopt a written policy covering the retirement of preferred stock that complies with this paragraph and part 628 of this chapter. The policy must, at a minimum:

(1) Establish any delegations of authority to retire preferred stock and the conditions of delegation, which must meet the requirements of paragraph (c) of this section and include minimum levels for regulatory capital standards as applicable and commensurate with the volatility of the preferred stock.

(2) Identify limitations on the amount of stock that may be retired during a single quarterly (or shorter) time period;

(3) Ensure that all stockholder requests for retirement are treated fairly and equitably;

(4) Prohibit any insider, including institution officers, directors, employees, or agents, from retiring any preferred stock in advance of the release of material non-public information concerning the institution to other stockholders; and

(5) Establish when insiders may retire their preferred stock.

(e) The institution's board must review its policy at least annually to ensure that it continues to be appropriate for the institution's current financial condition and consistent with its long-term goals established in its capital adequacy plan.

[81 FR 49777, July 28, 2016]

§615.5280 Retirement in event of default.

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land bank association, Federal land credit association or agricultural credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, Federal land credit association or agricultural credit association is in default, such institution may, but shall not be required to, retire at book value not to exceed par all or part of such equities, other than eligible borrower stock as defined in §615.5260(a)(1), owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(c) When the debt of a holder of equities or guaranty fund certificates issued by a bank for cooperatives or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities qualify or guaranty fund investments owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such investments qualify as eligible borrower stock, it shall be retired at par, as defined in §615.5260(a)(3). All other investments shall be retired at a rate determined by the institution to reflect its present value on the date of retirement.

(d) When the debt of a holder of the equities of a Farm Credit Bank or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such equities qualify as eligible borrower stock or are retired solely to permit a Federal land bank association to retire eligible borrower stock under §615.5280(a), they shall be retired at par. All other equities shall be retired at book value not to exceed par.

(e) Any retirements made under this section by a Federal land bank association shall be made only upon the specific approval of, or in accordance with, approval procedures issued by the association's funding bank.

(f) Prior to making any retirement pursuant to this section, except retirements pursuant to paragraphs (c) and (d) of this section, the institution shall provide the borrower with written notice of the following matters;

(1) A statement that the institution has declared the borrower's loan to be in default;

(2) A statement that the institution will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the institution;

(4) A statement of the amount of the outstanding debt that will be owed to the institution after the retirement of the borrower's equities; and

(5) The date on which the institution will retire the equities of the borrower.

(g) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

(h) The requirements of this section may be satisfied by notices given pursuant to §§617.7405, 617.7410, 617.7420, and 617.7425 of this chapter that contain the information required by this section.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989, as amended at 61 FR 67187, Dec. 20, 1996; 62 FR 13213, Mar. 19, 1997; 69 FR 10907, Mar. 9, 2004]

§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under § 617.7415 of this chapter, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If an association forgives and writes off, under § 617.7415 of this chapter, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(c) Notwithstanding paragraphs (a) and (b) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

[81 FR 49777, July 28, 2016]

§ 615.5295 Payment of dividends.

(a) The board of directors of a bank, association, or service corporation must declare a dividend on a class of stock before any dividends may be paid to stockholders.

(b) No bank, association, or service corporation may declare or pay any dividend unless after declaration or payment of the dividend the institution would continue to meet its regulatory capital standards under this part.

(c) Each System bank, association, and service corporation must exclude any accrued but unpaid dividends from regulatory capital computations under this part and part 628 of this chapter.

[70 FR 53909, Sept. 13, 2005, as amended at 81 FR 49777, July 28, 2016]

Subpart K [Reserved]

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

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

§ 615.5350 General—Applicability.

(a) The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to an institution under §§ 615.5205 and 628.10 of this chapter. The Farm Credit Administration is authorized to establish such minimum capital requirements for an institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the institution. Proceedings under this subpart also may be initiated to require an institution having capital ratios greater than those set forth in § 615.5205 or § 628.10 of this chapter to continue to maintain those higher ratios.

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

(1) An institution receiving special supervisory attention;

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

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

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

(5) An institution that is growing rapidly; or

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

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

[62 FR 4448, Jan. 30, 1997, as amended at 63 FR 39229, July 22, 1998; 81 FR 49777, July 28, 2016]

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

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

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

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

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

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

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

§ 615.5352 Procedures.

(a) *Notice*. When the Farm Credit Administration determines that minimum capital ratios greater than those set forth in § 615.5205 or § 628.10 of this chapter are necessary or appropriate for a particular institution, the Farm Credit Administration will notify the institution in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the institution.

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

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

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

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

(e) *Reconsideration based on change in circumstances*. If, after the Farm Credit Administration's decision in paragraph (c) of this section, there is a change in

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

[62 FR 4448, Jan. 30, 1997, as amended at 81 FR 49778, July 28, 2016]

§ 615.5353 Relation to other actions.

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

§ 615.5354 Enforcement.

An institution that does not have or maintain the minimum capital ratios applicable to it, whether required in subpart H of this part or part 628 of this chapter, in a decision pursuant to this subpart, in a written agreement or temporary or final order under part C of title V of the Act, or in a condition for approval of an application, or an institution that has failed to submit or comply with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the Farm Credit Administration considers appropriate. These sanctions may include the issuance of a capital directive pursuant to subpart M of this part or other enforcement action, assessment of civil money penalties, and/or the denial or condition of applications.

[81 FR 49778, July 28, 2016]

Subpart M—Issuance of a Capital Directive

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

§ 615.5355 Purpose and scope.

(a) This subpart is applicable to proceedings by the Farm Credit Administration to issue a capital directive under sections 4.3(b) and 4.3A(e) of the Act. A capital directive is an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in § 615.5205 or § 628.10 of this chapter; or established for the institution under subpart L of this part, by a written agreement under part C of title V of the Act, or as a condition for approval of an application. A capital directive may order the institution to:

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

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

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

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

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

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

(c) A capital directive issued under this rule, including a plan submitted under a capital directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in section 5.25 of

the Act. Violation of a capital directive may result in assessment of civil money penalties in accordance with section 5.32 of the Act.

[62 FR 4449, Jan. 30, 1997, as amended at 63 FR 39229, July 22, 1998; 81 FR 49778, July 28, 2016]

§615.5356 Notice of intent to issue a capital directive.

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

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

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

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

§615.5357 Response to notice.

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

(1) When, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution shall be informed promptly of the new time period;

(2) With the consent of the institution; or

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

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

§615.5358 Decision.

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

§615.5359 Issuance of a capital directive.

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

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

§615.5360 Reconsideration based on change in circumstances.

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

§615.5361 Relation to other administrative actions.

A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial

of applications. The Farm Credit Administration also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an institution's failure to achieve or maintain the applicable minimum capital ratios.

Subpart N [Reserved]

Subpart O—Book-Entry Procedures for Farm Credit Securities

SOURCE: 61 FR 67192, Dec. 20, 1996, unless otherwise noted.

§ 615.5450 Definitions.

In this subpart, unless the context otherwise requires or indicates:

(a) *Adverse claim* means a claim that a claimant has a property interest in a security and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the security.

(b) *Book-entry security* means a Farm Credit security issued or maintained in the Book-entry System.

(c) *Book-entry System* means the automated book-entry system operated by the Federal Reserve Banks, acting as the fiscal agent for the Farm Credit banks, through which book-entry securities are issued, recorded, transferred and maintained in book-entry form.

(d) *Definitive Farm Credit security* means a Farm Credit security in engraved or printed form, or that is otherwise represented by a certificate.

(e) *Eligible book-entry security* means a book-entry security issued or maintained in the Book-entry System, which by the terms of its securities documentation, is eligible to be converted from book-entry into definitive form.

(f) *Entitlement Holder* means a person to whose account an interest in a book-entry security is credited on the records of a securities intermediary.

(g) *Farm Credit banks* means one or more Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

(h) *Farm Credit securities* means consolidated notes, bonds, debentures, or other similar obligations of the Farm Credit banks and Systemwide notes, bonds, debentures, or similar obligations of the Farm Credit banks issued under sections 4.2(c) and 4.2(d), respectively, of the Act, or laws repealed thereby.

(i) *Federal Reserve Bank* means a Federal Reserve Bank or Branch acting as agent for the Farm Credit banks and the Funding Corporation.

(j) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains book-entry securities accounts and transfers book-entry securities.

(k) *Funding Corporation* means the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act, which issues Farm Credit securities on behalf of the Farm Credit banks.

(l) *Funds Account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

(m) *Participant* means a person that maintains a participant's securities account with a Federal Reserve Bank.

(n) *Participant's Securities Account* means an account in the name of a participant at a Federal Reserve Bank to which book-entry securities held for a participant are or may be credited.

(o) *Person* means an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative and any other similar organization, but does not mean the United States, a Farm Credit bank, the Funding Corporation or a Federal Reserve Bank.

(p) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text, and has the same meaning as in 31 CFR 357.2.

(q) *Securities Documentation* means the applicable statement of terms, trust indenture, securities agreement, offering circular or other documents establishing the terms of a book-entry security.

(r) *Securities Intermediary* means:

(1) A person that is registered as a ''clearing agency'' under the Federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a book-entry security that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(s) *Security* means a Farm Credit security as defined in paragraph (h) of this section.

(t) *Security Entitlement* means the rights and property interest of an entitlement holder with respect to a book-entry security.

(u) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(v) *Transfer Message* means an instruction of a participant to a Federal Reserve Bank to effect a transfer of a book-entry security maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

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

§615.5451 Book-entry and definitive securities.

Subject to subpart C of this part:

(a) Farm Credit banks operating under the same title of the Act may issue consolidated securities in book-entry form.

(b) Farm Credit banks may issue Systemwide securities in book-entry form.

(c) Consolidated and Systemwide securities also may be issued in either registered or bearer definitive form.

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

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

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the regulations contained in this subpart O, the securities documentation, and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

(i) A book-entry security or security entitlement, and

(ii) The operation of the Book-entry System as it applies to Farm Credit securities; and

(2) The rights of any person, including a participant, against the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

(i) A book-entry security or security entitlement, and

(ii) The operation of the Book-entry System as it applies to Farm Credit securities.

(b) A security interest in a security entitlement that is in favor of a Federal Reserve Bank from a participant and that is not recorded on the books of a Federal Reserve Bank pursuant to §615.5454(c)(1) of this subpart, is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the participant's securities account is located. A security interest in a security entitlement that is in favor of a Federal Reserve Bank from a person that is not a participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to §615.5454(c)(1)of this subpart, is governed by the law determined in the manner specified in §615.5453 of this subpart.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted revised Article 8 (see 31 CFR 357.2) then the law specified in paragraph (b) of this section shall be the law of that

State as though revised Article 8 had been adopted by that State.

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

§ 615.5453 Law governing other interests.

(a) To the extent not inconsistent with these regulations, the law (not including the conflict-of-law rules) of a securities intermediary's jurisdiction governs:

(1) The acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement;

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a security entitlement.

(b) The following rules determine a ''securities intermediary's jurisdiction'' for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (b)(3) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted revised Article 8 (see 31 CFR 357.2), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the securities account is a clearing corporation, and the participant's interest in a book-entry security is a security entitlement.

§ 615.5454 Creation of participant's security entitlement; security interests.

(a) A participant's security entitlement is created when a Federal Reserve Bank indicates by book entry that a book-entry security has been credited to a participant's securities account.

(b) A security interest in a security entitlement of a participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank

is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a security entitlement of a participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Farm Credit Banks, the Funding Corporation, and the Federal Reserve Banks have no obligation to agree to act on behalf of any person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a security entitlement that is in favor of a Federal Reserve Bank, a Farm Credit Bank, the Funding Corporation, or a person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a security entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in §615.5452(b) or §615.5453 of this subpart. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

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

§615.5455 Obligations of the Farm Credit banks and the Funding Corporation; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in §615.5454(c)(1), for the purposes of this subpart O, the Farm Credit banks, the Funding Corporation and the Federal Reserve Banks shall treat the participant to whose securities account an interest in a book-entry security has been credited as the person exclusively entitled to issue a transfer message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such security, notwithstanding any information or notice to the contrary. The Federal Reserve Banks, the Farm Credit banks, and the Funding Corporation are not liable to a person asserting or having an adverse claim to a security entitlement or to a book-entry security in a participant's securities account, including any such claim arising as a result of the transfer or disposition of a book-entry security by a Federal Reserve Bank pursuant to a transfer message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Farm Credit banks and the Funding Corporation to make payments (including payments of interest and principal) with respect to book-entry securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on book-entry securities are either credited by a Federal Reserve Bank to a

funds account maintained at the Federal Reserve Bank or otherwise paid as directed by the participant.

(2) Book-entry securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the participant's securities account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a funds account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the participant. No action by the participant is required in connection with the redemption of a book-entry security.

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

§ 615.5456 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Farm Credit banks and the Funding Corporation to perform functions with respect to the issuance of book-entry securities offered and sold by the Farm Credit banks and the Funding Corporation to which this subpart applies, in accordance with the terms of the securities documentation and the provisions of this subpart:

(1) To service and maintain book-entry securities in accounts established for such purposes;

(2) To make payments of principal and interest, as directed by the Farm Credit banks and the Funding Corporation;

(3) To effect transfer of book-entry securities between participants' securities accounts as directed by the participants;

(4) To effect conversions between book-entry securities and definitive Farm Credit securities with respect to those securities as to which conversion rights are available pursuant to the applicable securities documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the Farm Credit banks and the Funding Corporation.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this subpart, governing the details of its handling of book-entry securities, security entitlements, and the operation of the Book-entry System under this subpart.

§ 615.5457 Withdrawal of eligible book-entry securities for conversion to definitive form.

(a) Eligible book-entry securities may be withdrawn from the Book-entry System by requesting delivery of like definitive Farm Credit securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw eligible book-entry securities from book-entry in the Book-entry System, convert such securities into definitive Farm Credit securities and deliver them in accordance with such instructions.

(c) Farm Credit securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable securities documentation.

(d) All requests for withdrawal of eligible book-entry securities must be made prior to the maturity or the applicable date of call of the Farm Credit securities.

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

§ 615.5458 Waiver of regulations.

The Farm Credit Administration reserves the right, in the Farm Credit Administration's discretion, to waive any provision(s) of the regulations in this subpart in any case or class of cases for the convenience of the Farm Credit banks and the Funding Corporation or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Farm Credit Administration is satisfied that such action will not subject the Farm Credit banks and the Funding Corporation to any substantial expense or liability.

§ 615.5459 Liability of Farm Credit banks, Funding Corporation and Federal Reserve Banks.

The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks may rely on the information provided in a transfer message or other transaction documentation, and are not required to verify the information.

The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in the transfer message, other transaction documentation, or evidence submitted in support thereof.

§615.5460 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this subpart, the Farm Credit banks and the Funding Corporation may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Farm Credit banks and the Funding Corporation be necessary for the protection of the interests of the Farm Credit banks and the Funding Corporation.

(b) *Notice of attachment for Farm Credit securities in the Book-entry System.* The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except where a security entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

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

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

§615.5461 Lost, stolen, destroyed, mutilated or defaced Farm Credit securities, including coupons.

(a) Relief on the account of the loss, theft, destruction, mutilation, or defacement of any definitive consolidated or Systemwide securities of the Farm Credit banks and coupons of such securities may be granted on the same basis and to the same extent as relief may be granted under the statutes of the United States and the regulations of the Department of the Treasury on the account of the loss, theft, destruction, mutilation, or defacement of United States securities and coupons of such securities.

(b) Applicants for relief under paragraph (a) of this section, shall present claims and proof of loss:

(1) To the Division of Special Investments, Bureau of the Public Debt, P.O. Box 396, Parkersburg, WV 26102–0396, in the case of consolidated or Systemwide securities of the Farm Credit banks issued prior to May 1, 1978; or

(2) To the Federal Farm Credit Banks Funding Corporation, 10 Exchange Place, Suite 1401, Jersey City, NJ 07302, in the case of consolidated or Systemwide securities issued on or after May 1, 1978.

§615.5462 Restrictive endorsement of bearer securities.

When consolidated and Systemwide bearer securities of the Farm Credit banks are being presented to Federal Reserve Banks, for redemption, exchange, or conversion to book entry, such securities may be restrictively endorsed. The restrictive endorsement shall be placed thereon in substantially the same manner and with the same effects as prescribed in United States Treasury Department regulations, now or hereafter in force, governing like transactions in United States bonds; and consolidated or Systemwide securities of the Farm Credit banks so endorsed shall be prepared for shipment and shipped in the manner prescribed in such regulations for United States bearer securities. (See 31 CFR part 328.)

Subpart P—Global Debt Securities

§615.5500 Definitions.

In this subpart, unless the context otherwise requires or indicates:

(a) *Global debt securities* means consolidated Systemwide debt securities issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agents and distributed either exclusively outside the United States or simultaneously inside and outside the United States.

(b) *Global agent* means any fiscal agent, other than the Federal Reserve Banks, used by the Funding Corporation to facilitate the sale of global debt securities.

[60 FR 57919, Nov. 24, 1995]

§ 615.5502 Issuance of global debt securities.

(a) The Funding Corporation may provide for the sale of global debt securities on behalf of the Farm Credit banks through a global agent or agents by negotiation, offer, bid, or syndicate sale, and deliver such obligations by book-entry, wire transfer, or such other means as may be appropriate.

(b) The Funding Corporation Board of Directors shall establish appropriate criteria for the selection of global agents and shall approve each global agent.

[60 FR 57919, Nov. 24, 1995]

Subpart Q—Bankers' Acceptances

§ 615.5550 Bankers' acceptances.

Banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives' board of directors, under established policies, may delegate this authority to management.

[71 FR 65387, Nov. 8, 2006]

Subpart R [Reserved]

Subpart S—Federal Agricultural Mortgage Corporation Securities

§ 615.5570 Book-entry procedures for Federal Agricultural Mortgage Corporation Securities.

(a) The Federal Agricultural Mortgage Corporation (Farmer Mac) is a Federally chartered instrumentality of the United States and an institution of the Farm Credit System, subject to the examination and regulation of the Farm Credit Administration.

(b) Farmer Mac, either in its own name or through an affiliate controlled or owned by Farmer Mac, is authorized by section 8.6 of the Act:

(1) To issue and/or guarantee the timely payment of principal and interest on securities representing interests in or obligations backed by pools of agricultural real estate loans (guaranteed securities); and

(2) To issue debt obligations (which, together with the guaranteed securities described in paragraph (b)(1) of this section, are referred to as Farmer Mac securities). Farmer Mac may prescribe the forms, the denominations, the rates of interest, the conditions, the manner of issuance, and the prices of Farmer Mac securities.

(c) Farmer Mac securities shall be governed by §§ 615.5450, and 615.5452 through 615.5460. In interpreting those sections for purposes of this subpart, unless the context requires otherwise, the term ''Farmer Mac securities'' shall be read for ''Farm Credit securities,'' and ''Farmer Mac'' shall be read for ''Farm Credit banks'' and ''Funding Corporation.'' These terms shall be read as though modified where necessary to effectuate the application of the designated sections of subpart O of this part to Farmer Mac.

[61 FR 31394, June 20, 1996, as amended at 61 FR 67195, Dec. 20, 1996]

PART 616—LEASING

Sec.

616.6000 Definitions.
616.6100 Purchase and sale of interests in leases.
616.6200 Out-of-territory leasing.
616.6300 Leasing policies, procedures, and underwriting standards.
616.6400 Documentation.
616.6500 Investment in leased assets.
616.6600 Leasing limit.
616.6700 Stock purchase requirements.
616.6800 Disclosure requirements.

AUTHORITY: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.9, 3.10, 3.20, 3.28, 4.3, 4.3A, 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.3, 7.6, 7.8, 7.12, 7.13 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2130, 2131, 2141, 2149, 2154, 2154a, 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279a–3, 2279b, 2279c–1, 2279f, 2279f–1).

SOURCE: 64 FR 34518, June 28, 1999, unless otherwise noted.