(3) The total bonds outstanding for which the receiving institution is primarily liable exceed 20 times the combined capital and surplus accounts of the bank; or

(4) Based on application to it of one or more of the following ratios, the receiving institution is not financially viable in that it will not be able to continue to extend new or additional credit or financial assistance to its eligible borrowers:

(i) The ratio of stock to earned net worth (including legal reserve, unallocated and reserved surplus, undistributed earnings, and allowance for losses) exceeds 2 to 1;

(ii) The ratio of the outstanding bonds to capital and surplus exceeds 15 to 1;

(iii) Nonearning assets (any non-interest-bearing assets, including but not limited to cash, noninterest-earning loans, net fixed assets, other property owned, accrued interest receivable, and accounts receivable) exceed 15 percent of total assets;

(iv) Lendable net worth (interest-earning assets less interest-bearing liabilities) is zero or less.

(c) The FCA may direct a transfer of funds or equities between two or more Federal land bank associations or two or more production credit associations in district where it determines that such transfer:

(1) Is necessary to provide financial support to the district bank in which those associations are stockholders based on application of the criteria to the bank as set forth in paragraph (b) of this section; or

(2) Is necessary to provide financial support to one or more other like associations in the district based on application of the criteria set forth in paragraph (b)(2) or (b)(4) of this section to the associations, provided that in applying paragraph (b)(4)(ii) of this section the ratio of outstanding indebtedness to capital and surplus of the receiving association(s) shall not exceed 9 to 1; or

(3) Is an integral part of a plan that has been adopted by other institutions of the System, and approved by the FCA, under which those institutions will extend financial assistance to the district bank in which those associations are stockholders.

(d) A direction by the FCA for a transfer of funds or equities pursuant to this section shall be signed by the Chairman and shall establish the amount, timing, duration, repayment, and other terms of assessments necessary to accomplish such transfer, taking into consideration the financial condition of each institution to be assessed. Where the FCA directs a transfer of funds or equities between associations under paragraph (c) (1) or (2) of this section, it may authorize the district bank in which such associations are stockholders to accomplish the necessary assessments through debits and credits to the accounts of the bank.

Subpart I—Service Corporations

§611.1135 Incorporation of service corporations.

(a) What is the process for chartering a service corporation? A Farm Credit bank or association (you or your) may organize a corporation acting alone or with other Farm Credit banks or associations to perform, for you or on your behalf, any function or service that you are authorized to perform under the Act and Farm Credit Administration (we, us, or our) regulations, with two exceptions. Those exceptions are that your corporation may not extend credit or provide insurance services. To organize a service corporation, you must submit an application to us following the applicable requirements of paragraph (c) of this section. If what you propose in your application meets the requirements of the Act, our regulations, and any other conditions we may impose, we may issue a charter for your service corporation making it a federally chartered instrumentality of the United States. Your service corporation will be subject to examination, supervision, and regulation by us.

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(b) Who may own equities in your service corporation? (1) Your service corporation may only issue voting and non-voting stock to:
   (i) One or more Farm Credit banks and associations; and
   (ii) Persons that are not Farm Credit banks or associations, provided that at least 80 percent of the voting stock is at all times held by Farm Credit banks or associations.

(2) For the purposes of this subpart, we define persons as individuals or legal entities organized under the laws of the United States or any state or territory thereof.

(c) What must be included in your application to form a service corporation? Your application for a corporate charter must include:
   (1) The certified resolution of the board of each organizing bank or association authorizing the incorporation;
   (2) A request signed by the president(s) of the organizing bank(s) or association(s) to us to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity; and
   (3) The proposed articles of incorporation addressing, at a minimum, the following:
      (i) The name of your corporation;
      (ii) The city and state where the principal offices of your corporation are to be located;
      (iii) The general purposes for the formation of your corporation;
      (iv) The general powers of your corporation;
      (v) The procedures for a Farm Credit bank or association or persons that are not Farm Credit institutions to become a stockholder;
      (vi) The procedures to adopt and amend your corporation’s bylaws;
      (vii) The title, par value, voting and other rights, and authorized amount of each class of stock that your corporation will issue and the procedures to retire each class;
      (viii) The notice and quorum requirement for a meeting of shareholders, and the vote required for shareholder action on various matters;
      (ix) The procedures and shareholder voting requirements for the merger, voluntary liquidation, or dissolution of your corporation or the distribution of corporate assets;
      (x) The standards and procedures for the application and distribution of your corporation’s earnings; and
      (xi) The length of time your corporation will exist.

(4) The proposed bylaws, which must include the provisions required by §615.5220(b) of this chapter;

(5) A statement of the proposed amounts and sources of capitalization and operating funds;

(6) Any agreements between the organizing banks and associations relating to the organization or the operation of the corporation; and

(7) Any other supporting documentation that we may request.

(d) What will we do with your application? If we approve your completed application, we will issue a charter for your service corporation as a corporate body and a federally chartered instrumentality. We may condition the issuance of a charter, including imposing minimum capital requirements, as we deem appropriate. For good cause, we may deny your application.

(e) Once your service corporation is formed, how are its articles of incorporation amended? Your service corporation’s articles of incorporation may be amended in either of two ways:
   (1) The board of directors of the corporation may request that we amend the articles of incorporation by sending us a certified resolution of the board of directors of the service corporation that states the:
      (i) Section(s) to be amended;
      (ii) Reason(s) for the amendment;
      (iii) Language of the articles of incorporation provision, as amended; and
      (iv) Requisite shareholder approval has been obtained. The request will be subject to our approval as stated in paragraphs (a) and (c) of this section.

   (2) We may at any time make any changes in the articles of incorporation of your service corporation that are necessary and appropriate for the accomplishment of the purposes of the Act.

(f) When your service corporation issues equities, what are the disclosure requirements? Your service corporation must
provide the disclosures described in §615.5255 of this chapter.


§ 611.1136 Regulation and examination of service corporations.

(a) What regulations apply to a service corporation? Because a service corporation is formed by banks and associations, it is subject to applicable Farm Credit Administration (we, our) regulations.

(b) Who examines a service corporation? We examine service corporations.

(c) What types of service corporations are subject to our regulations and examination? All incorporated service corporations formed by banks and associations are subject to our regulations and examination.


§ 611.1137 Title VIII service corporations.

(a) What is a title VIII service corporation? A title VIII service corporation is a service corporation organized for the purpose of exercising the authorities granted under title VIII of the Act to act as an agricultural mortgage marketing facility.

(b) How do I form a title VIII service corporation? A title VIII service corporation is formed and subject to the same requirements as a service corporation formed under §611.1135, with one exception. The Federal Agricultural Mortgage Corporation or its affiliates may not form or own stock in a title VIII service corporation.

Subpart J—Unincorporated Business Entities

SOURCE: 78 FR 31831, May 28, 2013, unless otherwise noted.

§ 611.1150 Purpose and scope.

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

(b) Scope. Except as authorized under these regulations, no System institution may manage, control, become a member or partner, or invest in a State-organized or chartered business entity. This subpart applies to each System institution that organizes or invests in a UBE, including a UBE organized for the express purpose of investing in a Rural Business Investment Company. This subpart does not apply to UBEs that one or more System institutions have the authority to establish as Rural Business Investment Companies pursuant to the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended (FSRIA) and United States Department of Agriculture regulations implementing FSRIA.

§ 611.1151 Definitions.

For purposes of this subpart, the following definitions apply:

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

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

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