

reimbursement of a prevailing appellant's attorney fees will be at the attorney's customary billing rate if that rate is consistent with the prevailing community rate for similar services where the attorney ordinarily practices. The Board also invites suggestions as to alternatives that might carry out the Board's intent of establishing a more equitable scheme for reimbursement of a prevailing appellant's attorney fees.

The current regulation at 5 CFR 1201.203(a)(3) requires submission of evidence of "the prevailing community rate for similar services that will establish a market value for the attorney's services." The regulation does not define the "community" to be used in determining the prevailing community rate. Under Board precedent, the prevailing community rate is based on the geographic location where the hearing was held. *Manley v. Department of the Air Force*, 67 M.S.P.R. 467, 472-473 (1995).

Applying the general rule that the hearing location determines the reimbursement rate for the attorney can result in inequitable reimbursement. An attorney may be reimbursed at a lower rate than that which prevails at the location of his practice if the prevailing rate for similar services in the community where the hearing is (or would have been) held is lower than that at the location of his practice. It is also possible that an attorney could be reimbursed at a higher rate than that which prevails at the location of his practice if the prevailing rate for similar services at the hearing location is higher than that at the location of his practice. But see *Brown v. Department of Health and Human Services*, 50 M.S.P.R. 523 (1991).

The Board's current rule is akin to the Federal courts' "forum rule." In Federal court litigation, the place where the district court sits and where the appeal is filed is one location, and, in that context, that forum makes sense as the relevant community for determining rates. That model, however, no longer fits MSPB cases. In addition to an in-person hearing before an administrative judge, MSPB proceedings currently may be conducted by telephone, mail, facsimile, or video conference. In some cases, no hearing is held. In such situations, the parties, their representatives, and the administrative judge may all be in different geographic locations, and the attorney's work may well be done primarily in a location other than that in which an in-person hearing would have been held.

To reflect the realities of practice before the Board and provide a more equitable scheme for reimbursement of

a prevailing appellant's attorney fees, the Board is considering changing its regulation at 5 CFR 1201.203(a)(3) to reimburse a prevailing appellant's attorney at his customary billing rate, with evidence that the rate is consistent with the prevailing rate for similar services in the community in which the attorney ordinarily practices. The proposed rule is similar to the model rule recommended by the Administrative Conference of the United States in implementing the Equal Access to Justice Act (EAJA), 46 FR 32900, 32904-32906 (October 2, 1981) ("prevailing market rate" for determining allowable attorney fees).

The Board is publishing this rule as a proposed rule pursuant to 5 U.S.C. 1204(h). The Board has made a determination under the Regulatory Flexibility Act, Pub. L. 96-354, 95 Stat. 1164, 5 U.S.C. 601-612, that this proposed regulatory action would not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 1201.

Administrative practice and procedure, Civil rights, Government employees. Accordingly, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 would continue to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Amend § 1201.203 by revising paragraph (a)(3) to read as follows:

§ 1201.203 Proceedings for attorney fees.

(a) * * *

(3) A statement of the attorney's customary billing rate for similar work, with evidence that that rate is consistent with the prevailing community rate for similar services in the community in which the attorney ordinarily practices; and

* * * * *

Dated: December 20, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99-33357 Filed 12-22-99; 8:45 am]

BILLING CODE 7400-01-U

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 615

RIN 3052-AB91

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Stock Issuances

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration is proposing to amend regulations to allow Farm Credit System (System) service corporations to sell stock to non-System entities; and System institutions to adopt bylaws allowing the issuance of unlimited amounts of certain classes of equities.

The purpose of our proposal is to provide System institutions additional opportunities to fulfill their borrowers' needs through service corporations and more efficient issuance of equities related to earnings distributions and transfers of capital. We are also taking this opportunity to make a technical change to one of our regulations pertaining to disclosure requirements.

DATES: Please send your comments to us by January 24, 2000.

ADDRESSES: You may send comments by electronic mail to "reg-com@fca.gov" through the Pending Regulations section of our website at "www.fca.gov." You may also mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or fax them to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444, or Joy Strickland, Senior Counsel, or Howard Rubin, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed rule are to:

- Increase the flexibility and usefulness of service corporations;
- Provide adequate disclosures to investors in service corporations organized to exercise the authorities

granted by title VIII of the Farm Credit Act of 1971, as amended (Act); and

- Provide flexibility for the efficient distribution of a System institution's earnings and timely transfers of capital to a System association.

II. Background

A. Incorporation of Service Corporations

On August 18, 1998, we published a notice in the **Federal Register** that invited System institutions to identify existing regulations and policies that impose unnecessary burdens on the FCS. (See 63 FR 44176, Aug. 18, 1998.)¹ We received comments from an agricultural credit bank (ACB) and a Farm Credit Bank (FCB) on § 611.1135, which allows only System banks and associations to own stock in service corporations. CoBank, ACB, commented that we should allow more flexibility in creating and operating service corporations to allow non-System institutions to own part of the service corporation. CoBank, ACB, asserted that this flexibility would foster joint endeavors and alliances and create more products and services for System borrowers. The FCB of Texas commented that the Act does not limit service corporation stock ownership to only banks or associations. The FCB further commented that limiting stock ownership may lessen the usefulness of these corporations to System institutions.

B. Capitalization Bylaws

Section 615.5220(a)(3) of our regulations requires that System institutions' bylaws specify the number of shares that will be issued for each class of equities.² As System institutions merge, change their charters, or modify their bylaws, we note they experience difficulty in quantifying in their bylaws the amounts of certain equities that may be issued. Those equities include non-voting equities that may be issued in the event the institution requires financial assistance and equities issued to distribute earnings. Several institutions have indicated that the requirements of § 615.5220(a)(3) often result in burden on System institutions' boards because they must estimate the number of these equities necessary in the future. They point out that since these types of equities do not dilute a System institution's shareholder equity, the

¹ On November 18, 1998, we extended the comment period to January 19, 1999. See 63 FR 64013 (Nov. 18, 1998).

² There are two current exceptions to this requirement: (1) Stock that is required to be purchased when obtaining a loan; and (2) non-voting stock that is converted from voting stock after the repayment of a loan.

bylaws should not be required to specify the number authorized.

C. Technical Change

Currently § 615.5250(c)(2) regarding disclosure statements for issuance of stock contains a typographical reference error. The correct reference is to paragraph § 615.5250(c)(1) rather than § 615.5250(d)(1).

III. Analysis of Proposed Changes by Section

A. Section 611.1135

We are proposing to amend § 611.1135 to allow service corporations formed by System banks or associations to issue equity to persons or entities who are not System institutions. We propose that non-voting stock may be issued in unlimited amounts as long as the issuance is consistent with the service corporation's bylaws. We are proposing a limit, however, on the amount of voting stock that can be issued to non-System persons.

We believe that as federally chartered instrumentalities, System institutions should control their service corporations because they are also federally chartered instrumentalities. Therefore, we are proposing that System institutions hold at least 80 percent of the voting stock of their service corporations at all times. We considered various other percentages in deciding what voting stock control percentage to propose. However, we arrived at this proposed percentage for the following reasons:

- An 80 percent voting stock requirement, rather than a simple majority, provides more assurance of System control even when not all System stockholders vote in the same manner.
- It is consistent with voting stock control requirements in § 611.1137, which pertain to service corporations that act as agricultural mortgage marketing facilities.
- Control of a service corporation or subsidiary is also consistent with other banking laws governing non-System service corporations and operating subsidiaries.³

³ Under the Bank Services Company Act, all of the stock of a bank service company must be owned by one or more insured banks. 12 U.S.C. 1861(b). Federal savings associations may also invest in service corporations only if 100 percent of the corporation's stock is held by other savings associations having offices in the same state. 12 U.S.C. 1464(b)(4)(B). A national bank may establish or acquire an operating subsidiary as long as the parent bank owns more than 50 percent of the voting stock or the parent bank controls the subsidiary and no other party owns more than 50 percent of the voting stock. 12 CFR 5.34. A Federal savings association can have an operating

We seek your comments on the voting stock control requirement and the appropriate amount of System control that also provides adequate flexibility and usefulness of service corporations.

Congress originally provided authority for formation of corporate subsidiaries in 1980. Congress wanted System institutions to be able to develop the most efficient and effective means for delivery of services to borrowers and other System entities.⁴ We have noted that in recent years there has been an increase in System institutions forming alliances to offer a variety of services to their borrowers. This proposed rule will allow System institutions, for example, to purchase an existing service entity and charter it as a service corporation under the Act as a means of offering a new service. This rule would permit the existing service provider to retain an ownership interest.

We are further proposing that service corporations must provide adequate disclosure when issuing stock to persons other than System institutions. The proposed regulations would apply the requirements of § 615.5250(c) and (d) to such stock issuances.

B. Section 611.1137

We are proposing to amend § 611.1137, which allows service corporations to be organized to act as agricultural mortgage marketing facilities by selling loans in the secondary market. We are proposing that these service corporations that issue stock to non-System persons provide adequate disclosures pursuant to the disclosure requirements in § 615.5250(c) and (d).

Section 611.1137 requires that System institutions hold at least 80 percent of the voting stock of their title VIII service corporations at all times. We seek your comments on the voting stock control requirement and the appropriate System control amount that also provides adequate flexibility and usefulness of title VIII service corporations.

While amending §§ 611.1135 and 611.1137, we are taking the opportunity to write them in plain language using a question and answer format. Additionally, we are writing § 611.1136 in plain language. That section pertains to our regulation and examination of

subsidiary as long as the association owns more than 50 percent of the voting shares and no other person exercises effective operating control. 12 CFR 559.2. In addition, pursuant to 12 U.S.C. 1841, which defines terms in connection with bank holding companies, a company has control over a bank or other entity if the company has power to vote 25 percent or more of any class of voting stock.
⁴ See H.R. Rep. No. 1287, 96th Cong., 2nd Sess., 23 (1980).

incorporated service corporations and unincorporated service organizations.

C. Section 615.5220

We are proposing to amend § 615.5220(a)(3) to allow System institutions to adopt bylaws that provide for issuance of certain equities in unlimited amounts. Current law requires that bylaws, approved by voting shareholders, set forth the number of each class of equities that can be issued, with two exceptions. Those equities that can be issued in unlimited amounts are:

- Equities required to be purchased as a condition of obtaining a loan; and
- Non-voting stock that results when voting stock is converted after the repayment of a loan.

We are proposing to also allow bylaws to provide for the issuance of unlimited amounts of:

- Non-voting stock that an association issues to its funding bank in exchange for the bank transferring capital pursuant to § 615.5171; and
- Equities that institutions provide to borrowers for the sole purpose of distributing that institution's earnings.

We are proposing this change to assure timely transfers of capital to an association as well as the flexibility for the efficient distribution of an institution's earnings. This proposal will not dilute a shareholder's voting rights in an institution or affect a shareholder's preference in the event of an institution liquidation. Any issuance of preferred stock would still require that all shareholders affected by the preference vote on the issuance as described in § 615.5230(b)(1). We note that this proposal does not prevent System institutions' boards and shareholders from stipulating in their institutions' bylaws the amount of capital that may be transferred and earnings distribution equities authorized to be issued.

List of Subjects in 12 CFR Parts 611 and 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, we propose to amend parts 611 and 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142,

2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Revise subpart I to read as follows:

Subpart I—Service Organizations

Sec.

611.1135 Incorporation of service corporations.

611.1136 Regulation and examination of service organizations.

611.1137 Title VIII service corporations.

Subpart I—Service Organizations

§ 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 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 sell 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.

(b) *Who may own equities in your service corporation?* All Farm Credit banks and associations are eligible to become stockholders in your service corporation. Your service corporation may also issue non-voting and voting stock to persons that are not Farm Credit institutions, provided that at least 80 percent of the voting stock is at all times held by Farm Credit institutions. 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 and stating:

- (i) The section(s) to be amended;
- (ii) The reason(s) for the amendment;
- (iii) The language of the articles of incorporation provision, as amended; and
- (iv) That the 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 § 615.5250(c) and (d) of this chapter.

§ 611.1136 Regulation and examination of service organizations.

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

(b) *Who examines a service organization?* We examine service organizations.

(c) *What types of service organizations are subject to our regulations and examination?* Incorporated service corporations and unincorporated service organizations 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 regulated in the same manner 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.

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

4. The authority citation for part 615 continues to read as follows:

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, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 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, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

Subpart I—Issuances of Equities

5. Amend § 615.5220 by revising paragraph (a)(3) to read as follows:

§ 615.5220 Capitalization bylaws.

* * * * *

(a) * * *

(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 limit for these equities:

(i) Equities that are required to be purchased as a condition of obtaining a loan.

(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 issued solely for the purpose of distributing an institution's earnings.

* * * * *

§ 615.5250 [Amended]

6. Amend § 615.5250(c)(2) by removing the reference to "(d)(1)" and adding in its place, the reference "(c)(1)".

Dated: December 16, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99-33104 Filed 12-22-99; 8:45 am]

BILLING CODE 6705-01-P

POSTAL SERVICE

39 CFR Part 111

Loading Requirements for PVDS Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is seeking comments on a proposed revision to the Domestic Mail Manual to require that if Periodicals mail is on the same vehicle as Standard Mail prepared for Plant Verified Drop Shipment (PVDS), then

the Periodicals mail must be loaded toward the tail of the vehicle so that, for each destination entry, Periodicals mail can be offloaded first.

DATES: Comments must be received on or before January 24, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260-2405. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC 20260-1540 between 9 a.m. and 4 p.m., Monday through Friday. Photocopies cost \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, (202) 268-6351 or Anne Emmerth, (202) 268-2363.

SUPPLEMENTARY INFORMATION: The Postal Service has been working closely with the National Mailers Technical Advisory Committee (MTAC) Periodicals Service Improvement Team to resolve service issues related to the processing and delivery of Periodicals mail. One item discussed in these meetings was the proper positioning of Periodicals mail in vehicles when it is part of a mixed load (*i.e.*, loaded in the same vehicle as Standard Mail) for destination entry. For service reasons, the Postal Service generally handles Periodicals mail before Standard Mail. Some members of the National Periodicals Service Improvement Team were in favor of adding a requirement mandating that, for vehicles containing both Standard Mail and Periodicals mail prepared for destination entry, the Periodicals mail be loaded toward the tail of the vehicle to allow the Periodicals mail to be offloaded first. This could improve service and also allow the Postal Service to more readily track the arrival and unloading of the Periodicals mail. This issue was also recently discussed at a Periodicals Advisory Group (PAG) meeting, which consisted of both publishers and printers. The PAG also voiced a majority opinion in support of a policy that would require such loading of vehicles containing both Periodicals and Standard Mail.

In view of the support expressed by a number of Periodicals publishers and printers, the Postal Service is hereby soliciting comments on a proposed Domestic Mail Manual revision for PVDS mail to require that if Periodicals mail is on the same vehicle as Standard Mail, then the Periodicals mail must be loaded toward the tail of the vehicle so