exports, or international business operations shall not exceed the percentage of ownership that eligible cooperatives hold in such entity multiplied by the value of the total assets of such entity; and

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

[62 FR 4442, Jan. 30, 1997, as amended at 69 FR 43514, July 21, 2004]

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Approval by other Farm Credit System institutions.* A bank for cooperatives or agricultural credit bank may not participate in a loan to a similar entity under title III of the Act if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under the Act, unless agreed to by the Farm Credit Bank or association.

[62 FR 4444, Jan. 30, 1997, as amended at 69 FR 43514, July 21, 2004; 75 FR 18743, Apr. 12, 2010]

PART 614—LOAN POLICIES AND OPERATIONS

Subpart A—Lending Authorities

Sec.

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

Subpart R—Secondary Market Authorities

Subpart S—Flood Insurance 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, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 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, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); 12 U.S.C. 2121 note; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

Subpart A—Lending Authorities

SOURCE: 55 FR 24880, June 19, 1990, unless otherwise noted.

§ 614.4000 Farm Credit Banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, Farm Credit Banks are authorized, subject to the requirements in § 614.4200 of this part, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

(b) *Extensions of credit to Farm Credit direct lender associations.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsement or guaranty, any note, draft, and other obligations for loans that have been made in accordance with the provisions of subparts D and E of part 614 of these regulations. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of § 614.4125.

(c) *Extensions of credit to other financing institutions.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or any corporation engaged in the making of loans to farmers and ranchers or producers or harvesters of aquatic products (collectively, ''other financing institutions''), for purposes eligible for financing by a production credit association in accordance with § 614.4130 and subpart P of this part. Farm Credit Banks are authorized to discount for or purchase from such institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part.

(d) *Loan participations.* Subject to the requirements of subpart H of part 614, a Farm Credit Bank may enter into loan participation agreements with:

(1) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act;

(2) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

(e) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part, Farm Credit Banks may sell interests in loans only to:

(i) Farm Credit System institutions authorized to purchase such interests;

(ii) Other lenders that are not Farm Credit System institutions; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, Farm Credit Banks may purchase interests other than participation interests in loans and nonvoting stock from other Farm Credit System institutions.

(3) Farm Credit Banks, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests authorized in paragraph (d) of this section) from institutions other than Farm Credit System institutions only for the purpose of pooling and securitizing such loans under title VIII of the Act.

(f) *Residual powers after the transfer of lending authority to an association.* After transferring its authority to make and participate in long-term real estate loans to an agricultural credit association or a Federal land credit association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, a Farm Credit Bank retains residual authority to:

(1) Enter into loan participation agreements pursuant to paragraph (d) of this section;

(2) Purchase or sell other interests in loans in accordance with paragraph (e) of this section; and

(3) Make long-term real estate loans in accordance with paragraph (a) of this section in areas of its chartered territory where no active association operates.

[55 FR 24880, June 19, 1990, as amended at 57 FR 38246, Aug. 24, 1992; 57 FR 43290, Sept. 18, 1992; 62 FR 51013, Sept. 30, 1997; 63 FR 5723, Feb. 4, 1998; 64 FR 43049, Aug. 9, 1999; 65 FR 24102, Apr. 25, 2000; 67 FR 1285, Jan. 10, 2002]

§ 614.4010 Agricultural credit banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, agricultural credit banks are authorized, subject to the requirements of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

(b) *Extensions of credit to Farm Credit direct lender associations.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsement or guaranty, any note, draft, and other obligations for loans made by the association in accordance with the provisions of this part. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of § 614.4125.

(c) *Extensions of credit to other financing institutions.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or corporation engaged in the making of loans to farmers, ranchers, or producers or harvesters of aquatic products (collectively, ''other financing institutions''),

for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part. Agricultural credit banks are authorized to discount for or purchase from such other financing institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with the requirements of § 614.4130 and subpart P of this part.

(d) *Extensions of credit to or on behalf of eligible cooperatives.* Agricultural credit banks are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (d)(4) and (d)(5) of this section, to:

(1) Eligible cooperatives, as defined in § 613.3100(b)(1), in accordance with §§ 614.4200, 614.4231, 614.4232, 614.4233, and subpart Q of part 614;

(2) Other eligible entities, as defined in § 613.3100(b)(2), in accordance with §§ 614.4200, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholders' operations in the United States, in accordance with § 614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has a minimum ownership interest, for the purpose of facilitating such stockholder's import operations of the type described in paragraph (d)(4) of this section, provided the stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614.

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements of § 613.3200 (d) and (e) of this chapter.

(e) *Loan participations.* Subject to the requirements of subpart H of this part, an agricultural credit bank may enter into loan participation agreements with:

(1) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under the Act;

(2) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

(f) *Other interest in loans.* (1) Subject to subpart H of this part, agricultural credit banks may sell interests in real estate mortgage loans identified in paragraph (a) of this section to Farm Credit System institutions authorized to purchase such interests, other lenders, and certified agricultural mortgage marketing facilities for the Federal Agricultural Mortgage Corporation. Agricultural credit banks may also sell interests in the types of loans listed in paragraph (d) of this section to other Farm Credit System institutions that are authorized to purchase such interests.

(2) Subject to the requirements of subpart H of this part, agricultural

credit banks may purchase interests other than participation interests in loans and nonvoting stock from other Farm Credit System institutions.

(3) Agricultural credit banks, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests authorized in paragraph (e) of this section) from institutions other than Farm Credit System institutions only for the purpose of pooling and securitizing such loans under title VIII of the Act.

(g) *Residual powers after the transfer of lending authority to an association.* After transferring its authority to make and participate in long-term real estate loans to an agricultural credit association or a Federal land credit association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, an agricultural credit bank retains residual authority to:

(1) Enter into loan participation agreements pursuant to paragraph (e) of this section;

(2) Purchase or sell other interests in loans in accordance with paragraph (f) of this section; and

(3) Make long-term real estate loans in accordance with paragraph (a) of this section in areas of its chartered territory where no active association operates.

[55 FR 24880, June 19, 1990, as amended at 57 FR 38246, Aug. 24, 1992; 57 FR 43290, Sept. 18, 1992; 62 FR 4445, Jan. 30, 1997; 62 FR 51013, Sept. 30, 1997; 63 FR 5723, Feb. 4, 1998; 64 FR 43049, Aug. 9, 1999; 65 FR 24102, Apr. 25, 2000; 67 FR 1285, Jan. 10, 2002; 71 FR 65387, Nov. 8, 2006]

§ 614.4020 Banks for cooperatives.

(a) Banks for cooperatives are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (a)(4) and (a)(5) of this section, to:

(1) Eligible cooperatives, as defined in § 613.3100(b)(1), in accordance with §§ 614.4200, 614.4231, 614.4232, 614.4233, and subpart Q of this part;

(2) Other eligible entities as defined in § 613.3100(b)(2), in accordance with §§ 614.4200, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholder's operations in the United States, in accordance with § 614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of this part; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has an ownership interest, for the purpose of facilitating the import operations of the type described in paragraph (a)(4) of this section, in accordance with policies of the bank's board, § 614.4233, and subpart Q of this part.

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements in § 613.3200 (d) and (e) of this chapter.

(b) *Loan participations.* Subject to the requirements of subpart H of this part, a bank for cooperatives may enter into loan participation agreements with:

(1) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title III of the Act;

(2) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make,

provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

[55 FR 24880, June 19, 1990, as amended at 62 FR 4445, Jan. 30, 1997; 62 FR 51013, Sept. 30, 1997; 67 FR 1285, Jan. 10, 2002; 71 FR 65387, Nov. 8, 2006]

§ 614.4030 Federal land credit associations.

(a) *Long-term real estate lending.* Federal land credit associations are authorized, subject to the requirments of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

(b) *Loan participations.* Subject to the requirements of subpart H of this part, Federal land credit associations may enter into participation agreements with:

(1) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act;

(2) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

(c) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, Federal land credit associations may sell interests in loans made under paragraph (a) of this section only to:

(i) Farm Credit System institutions, as authorized by their respective funding banks;

(ii) Other lenders that are not Farm Credit System institutions, as authorized by their respective funding banks; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, Federal land credit associations may purchase interests in loans that comply with the requirements of paragraph (a) of this section and nonvoting stock from Farm Credit System institutions.

(3) Federal land credit associations, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests under paragraph (b) of this section) from institutions other than Farm Credit System institutions for the purpose of pooling and securitizing such loans under title VIII of the Act.

[55 FR 24880, June 19, 1990, as amended at 57 FR 38247, Aug. 24, 1992; 62 FR 51013, Sept. 30, 1997; 64 FR 43049, Aug. 9, 1999; 65 FR 24102, Apr. 25, 2000; 67 FR 1285, Jan. 10, 2002]

§ 614.4040 Production credit associations.

(a) *Short- and intermediate-term loans.* Production credit associations are authorized to make or guarantee short- and intermediate-term loans and provide other financial assistance for a term of:

(1) Not more than 7 years;

(2) More than 7 years, but not more than 10 years, as set forth in policies approved by the funding bank; or

(3) Not more than 15 years to producers and harvesters of aquatic products for major capital expenditures, including but not limited to the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the operations of producers or harvesters of aquatic products.

(b) *Loan participations.* Subject to the requirements of subpart H of this part, a production credit association may enter into participation agreements with:

(1) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title II of the Act;

(2) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

(c) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, production credit associations may sell interests in loans that are made under paragraph (a) of this section to:

(i) Banks of the Farm Credit System, as authorized by their respective funding banks; and

(ii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, production credit associations, as authorized by their respective funding banks, may purchase interests in loans that comply with the requirements of paragraph (a) of this section and nonvoting stock from banks of the Farm Credit System.

(3) Production credit associations, in their capacity as certified mortgage marketing facilities under title VIII of the Act, may purchase from Farm Credit System institutions and institutions that are not Farm Credit System institutions interests in loans (other than participation interests authorized by paragraph (c) of this section) for the purpose of pooling and securitizing such loans under title VIII of the Act.

[55 FR 24880, June 19, 1990; 55 FR 28511, July 11, 1990, as amended at 57 FR 38247, Aug. 24, 1992; 62 FR 51013, Sept. 30, 1997; 64 FR 43049, Aug. 9, 1999; 65 FR 24102, Apr. 25, 2000; 67 FR 1285, Jan. 10, 2002; 85 FR 60693, Sept. 28, 2020]

§ 614.4050 Agricultural credit associations.

(a) *Terms to maturity on loans.* Agricultural credit associations are authorized to make or guarantee, subject to requirements of § 614.4200:

(1) Long-term real estate mortgage loans with maturities of not less than 5 nor more than 40 years, and continuing commitments to make such loans; and

(2) Short- and intermediate-term loans and provide other similar financial assistance for a term of not more than:

(i) 10 years; or

(ii) 15 years to aquatic producers and harvesters for their aquatic operations.

(b) *Loan participations.* Subject to the requirements of subpart H of this part, agricultural credit associations may enter into participation agreements with:

(1) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under titles I and II of the Act;

(2) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(3) The Federal Agricultural Mortgage Corporation to the extent provided in § 614.4055.

(c) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, agricultural credit associations may sell:

(i) Interests in loans made under paragraph (a)(1) of this section only to:

(A) Farm Credit System institutions, as authorized by their respective funding banks;

(B) Lenders that are not Farm Credit System institutions, as authorized by their respective funding banks; and

(C) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(ii) Interests in loans made under paragraph (a)(2) of this section only to:

(A) Banks of the Farm Credit System, as authorized by their respective funding banks; and

(B) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, agricultural credit associations may purchase:

(i) Interests in loans that comply with the requirements in paragraph (a)(1) of this section from institutions of the Farm Credit System;

(ii) Interests in loans that comply with the requirements of paragraph (a)(2) of this section from banks of the Farm Credit System; and

(iii) Nonvoting stock from institutions of the Farm Credit System.

(3) Agricultural credit associations, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans, other than participation interests authorized by paragraph (b) of this section, from institutions other than Farm Credit System institutions for the purpose of pooling and securitizing such loans under title VIII of the Act.

[55 FR 24880, June 19, 1990; 55 FR 28511, July 11, 1990, as amended at 57 FR 38247, Aug. 24, 1992; 62 FR 51013, Sept. 30, 1997; 64 FR 43049, Aug. 9, 1999; 65 FR 24102, Apr. 25, 2000; 67 FR 1285, Jan. 10, 2002; 85 FR 60693, Sept. 28, 2020]

§ 614.4055 Federal Agricultural Mortgage Corporation loan participations.

Subject to the requirements of subpart H of this part 614:

(a) Any Farm Credit System bank or direct lender association may buy from, and sell to, the Federal Agricultural Mortgage Corporation, participation interests in ''qualified loans.''

(b) The Federal Agricultural Mortgage Corporation may buy from, and sell to, any Farm Credit System bank or direct lender association, or lender that is not a Farm Credit System institution, participation interests in ''qualified loans.''

(c) For purposes of this section, ''qualified loans'' means qualified loans as defined in section 8.0(9) of the Act.

[67 FR 1285, Jan. 10, 2002]

§ 614.4060 Affiliates established pursuant to section 8.5(e)(1) of the Farm Credit Act of 1971.

An affiliate established by one or more Farm Credit System institutions pursuant to section 8.5(e)(1) of the Act and § 611.1137 of this chapter, as a certified agricultural mortgage marketing facility, may purchase loans from Farm Credit System institutions and institutions other than Farm Credit System institutions in accordance with title VIII of the Act and any applicable regulation promulgated thereunder.

[57 FR 38247, Aug. 24, 1992]

Subpart B—Chartered Territories

§ 614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

(a) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly within its chartered territory regardless of the residence of the applicant.

(b) A bank or association operating under title I or II of the Act may finance the operations of a borrower headquartered and operating in its territory even though the operation financed is conducted partially outside its territory, provided notice is given to all Farm Credit institutions providing similar credit in the territory(ies) in which the operations being financed are conducted. A bank or association operating under title I or II of the Act may lend to a borrower headquartered outside its territory to finance eligible borrower operations that are conducted partially within its territory and partially outside its territory only if the concurrence of Farm Credit institutions providing similar credit for the territories in which the operations are conducted is obtained.

(c) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly outside its chartered territory, provided such loans are authorized by the policies of the bank and/or association involved, do not constitute a significant shift in loan volume away from the bank or association's assigned territory, and are made and administered in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) If a loan is made to an eligible borrower whose operations are conducted wholly outside the chartered territory of the lending bank or association, the lending institution shall obtain concurrence of all Farm Credit institutions providing similar credit in the territory(ies) in which the operation being financed is conducted.

(2) Loans to finance eligible borrower operations conducted wholly outside a bank's or association's territory shall be appropriately designated by the bank or association to provide adequate identification of the number and volume of such loans, which shall be monitored by the bank or association.

(d) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly or partially outside its chartered territory through the purchase of loans from the Federal Deposit Insurance Corporation in compliance with § 614.4325(b)(3), provided:

(1) Notice is given to the Farm Credit System institution(s) chartered to serve the territory where the headquarters of the borrower's operation being financed is located; and

(2) After loan purchase, additional financing of eligible borrower operations complies with paragraphs (a), (b), and (c) of this section.

[55 FR 24882, June 19, 1990, as amended at 76 FR 30250, May 25, 2011]

§ 614.4080 Loans and chartered territory—banks for cooperatives.

Loans made under title III by banks for cooperatives and agricultural credit banks may be made to eligible domestic parties domiciled within any territory that may be served by Farm Credit institutions under section 1.2 of the Act and to eligible foreign parties without regard to domicile.

[55 FR 24882, June 19, 1990]

Subpart C—Bank/Association Lending Relationship

§ 614.4100 Policies governing lending through Federal land bank associations.

(a) Farm Credit Banks and agricultural credit banks may delegate authority to make credit decisions to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided the association develops, implements and maintains adequate credit administration guidelines, standards, and practices.

(b) The board of directors of each Farm Credit Bank and each agricultural credit bank lending through Federal land bank associations shall adopt policies and procedures governing the exercise of statutory and delegated authorities by such associations. Policies governing the delegated authorities shall:

(1) Define authorities to be delegated;

(2) Require the documented evaluation of the capability and responsibility of individuals exercising delegated authorities;

(3) Provide for reporting of actions taken under delegated authority to the delegating bank;

(4) Provide procedures for periodic review and enforcement;

(5) Provide for withdrawal of authority where appropriate; and

(6) Where redelegation from the association's board to association employees is authorized, require similar control measures to be used.

[55 FR 24883, June 19, 1990]

§ 614.4110 Transfer of direct lending authority to Federal land bank associations and agricultural credit associations.

(a) Upon the transfer of authority to make and participate in long-term agricultural real estate mortgage loans by a Farm Credit Bank or agricultural credit bank to a Federal land bank association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, the association shall be designated a Federal land credit association and shall have the powers set forth in § 614.4030.

(b) Upon the transfer of the authority to make and participate in long-term real estate loans by a Farm Credit Bank or agricultural credit bank to an agricultural credit association pursuant to section 7.6(d) of the Act, the association shall have all of the powers set forth in § 614.4050.

(c) An association to which such long-term lending authority is to be

transferred shall have in place, prior to the transfer, policies and procedures guiding the extension and administration of credit within its territory.

[55 FR 24883, June 19, 1990]

§ 614.4120 Policies governing extensions of credit to direct lender associations and OFIs.

The board of directors of each Farm Credit Bank and agricultural credit bank shall adopt policies and procedures governing the making of direct loans to and the discounting of loans for direct lender associations and OFIs. The policies and procedures shall prescribe lending policies and loan underwriting standards that are consistent with sound financial and credit practices. The policies shall require a periodic review of the lending relationship with each direct lender association and OFI at intervals consistent with the term of the general financing agreement but in no case longer than 5 years. The policies shall require an evaluation of the creditworthiness of a direct lender association on the basis of credit factors and lending policies and loan underwriting standards set forth in part 614, subpart D, and may permit lending to such an institution on an unsecured basis only if the overall condition of the institution warrants. The stated term of a general financing agreement shall not exceed 5 years but may be automatically renewable for additional terms not to exceed 5 years if neither party objects at the time of renewal. The term of any general financing agreement that provides for unsecured lending to a direct lender association shall not exceed 1 year and may not be automatically renewed.

[63 FR 5724, Feb. 4, 1998]

§ 614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, any direct lender association except pursuant to a general financing agreement. Each general financing agreement must require that the amount of financing available to a direct lender association not be based on loans that are ineligible under the Act and the regulations in this chapter. If financing under a general financing agreement is based on a loan that FCA determines is ineligible under the Act and the regulations in this chapter, then the amount of financing available must be recalculated without that ineligible loan.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 10 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates.

(c) The general financing agreement shall address only those matters that are reasonably related to the debtor/creditor relationship between the Farm Credit Bank or agricultural credit bank and the direct lender association.

(d) The total credit extended to a direct lender association, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the direct lender association. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank.

(e) A Farm Credit Bank or agricultural credit bank that provides notice to a direct lender association that it is in material default of any covenant, term, or condition of the general financing agreement, promissory note, security agreement, or other related documents simultaneously shall provide written notification to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates and the Director, Risk Management, Farm Credit System Insurance Corporation.

(f) A direct lender association shall provide written notification to the

Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates, and the Director, Risk Management, Farm Credit System Insurance Corporation immediately upon receipt of a notice that it is in material default under any general financing agreement, loan agreement, promissory note, security agreement, or other related documents with a Farm Credit Bank, agricultural credit bank or non-Farm Credit institution.

(g) A Farm Credit Bank or agricultural credit bank shall obtain prior written consent of the Farm Credit Administration before it takes any action that leads to or could lead to the liquidation of a direct lender association.

(h) No direct lender association shall obtain financing from any party unless the parties agree to the requirements of this paragraph. No Farm Credit Bank, agricultural credit bank, or other party shall petition any Federal or State court to appoint a conservator, receiver, liquidation agent, or other administrator to manage the affairs of or liquidate a direct lender association.

[63 FR 5724, Feb. 4, 1998, as amended at 69 FR 43514, July 21, 2004]

§614.4130 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and OFIs.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, an OFI, as defined in §611.1205 of this chapter, except pursuant to a general financing agreement.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 10 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates.

(c) The total credit extended to the OFI, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the OFI. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank.

[63 FR 5724, Feb. 4, 1998, as amended at 67 FR 17917, Apr. 12, 2002]

Subpart D—General Loan Policies for Banks and Associations

§614.4150 Lending policies and loan underwriting standards.

Under the policies of its board, each institution shall adopt written standards for prudent lending and shall issue written policies, operating procedures, and control mechanisms that reflect prudent credit practices and comply with all applicable laws and regulations. Written policies and procedures shall, at a minimum, prescribe:

(a) The minimum supporting credit and financial information, frequency for collection of information, and verification of information required in relation to loan size, complexity and risk exposure

(b) The procedures to be followed in credit analysis

(c) The minimum standards for loan disbursement, servicing and collections

(d) Requirements for collateral and methods for its administration

(e) Loan approval delegations and requirements for reporting to the board

(f) Loan pricing practices

(g) Loan underwriting standards that include measurable standards:

(1) For determining that an applicant has the operational, financial, and management resources necessary to repay the debt from cashflow

(2) That are appropriate for each loan program and the institution's risk-bearing ability; and

(3) That consider the nature and type of credit risk, amount of the loan, and enterprises being financed

(h) Requirements that loan terms and conditions are appropriate for the loan; and

(i) Such other requirements as are necessary for the professional conduct of a lending organization, including

documentation for each loan transaction of compliance with the loan underwriting standards or the compensating factors or extenuating circumstances that establish repayment of the loan notwithstanding the failure to meet any one or more loan underwriting standard.

[62 FR 51014, Sept. 30, 1997]

§ 614.4155 Interest rates.

Loans made by each bank and direct lender association shall bear interest at a rate or rates as may be determined by the institution board. The board shall set interest rates or approve individual interest rate changes either on a case-by-case basis or pursuant to an interest rate plan within which management may establish rates. Any interest rate plan shall set loan-pricing policies and objectives, provide guidance regarding the circumstances under which management may adjust rates, and provide the upper and lower limits on management authority. Any interest rate plan adopted shall be reviewed on a continuing basis by the board, as well as in conjunction with its review and approval of the institution's operational and strategic business plan.

[62 FR 66818, Dec. 22, 1997]

§ 614.4160 Differential interest rate programs.

Pursuant to policies approved by the board of directors, differential interest rates may be established for loans based on a variety of factors that may include type, purpose, amount, quality, funding or operating costs, or similar factors or combinations of factors. Differential interest rate programs should achieve equitable rate treatment within categories of borrowers. In the adoption of differential interest rate programs, institutions may consider, among other things, the effect that such interest rate structures will have on the achievement of objectives relating to the special credit needs of young, beginning or small farmers.

[61 FR 67186, Dec. 20, 1996. Redesignated at 62 FR 66818, Dec. 22, 1997]

§ 614.4165 Young, beginning, and small farmers and ranchers.

(a) Definitions.

(1) For purposes of this subpart, the term ''credit'' includes:

(i) Loans made to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act; and

(ii) Interests in participations made to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act.

(2) For purposes of this subpart, the term ''services'' includes:

(i) Leases made to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act; and

(ii) Related services to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act.

(b) Farm Credit banks oversight.

(1) Each Farm Credit Bank and Agricultural Credit Bank must adopt written policies that direct:

(i) The board of each affiliated direct lender association to establish a program to provide sound and constructive credit and related services to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS);

(ii) Each affiliated direct lender association to include in its YBS program provisions ensuring coordination with other System institutions in the territory and other governmental and private sources of credit; and

(iii) The bank to provide the FCA a complete and accurate annual report summarizing the YBS program operations and achievements of its affiliated direct lender associations.

(2) Annually, the YBS program of each direct lender association must be reviewed and approved by its funding bank, provided review and approval shall solely be to determine whether the YBS program contains all required components as set forth in paragraph (d) of this section. Any conclusion by the bank that a YBS program is incomplete must be communicated in writing to the direct lender association and to the FCA within 30 days.

(3) Each Farm Credit Bank and Agricultural Credit Bank must implement internal controls for requirements in

paragraphs (b)(1)(iii) and (b)(2) of this section.

(c) Direct lender association YBS plan.

(1) YBS program components outlined in paragraph (d) of this section must be included in each direct lender association's operational and strategic business plan for at least the succeeding 3 years (as set forth in §618.8440 of this chapter).

(2) The YBS portion of the operational and strategic business plan must:

(i) Analyze the direct lender association's performance in the previous year toward achieving the components in paragraph (d) of this section;

(ii) Discuss variances and reasons for the results; and

(iii) Identify how the qualitive factors and quantitative goals in paragraph (d) of this section assist and expand access to credit and education for YBS farmers and ranchers.

(d) Direct lender association YBS programs. The board of directors of each direct lender association must establish a program to provide sound and constructive credit and services to YBS farmers and ranchers in its territory. Each YBS program must operate in a safe and sound manner and within the direct lender association's risk-bearing capacity, while meeting the unique needs of YBS farmers and ranchers. Such a program must include the following minimum components:

(1) Qualitative factors—

(i) Corporate governance.

(A) A mission statement describing program objectives and specific means for achieving such objectives.

(B) Internal controls that establish clear lines of responsibility for YBS strategic plan development and the corresponding YBS program implementation, tracking YBS program performance, and YBS quarterly reporting to the direct lender association's board of directors.

(ii) Credit and related services.

(A) Efforts to offer credit and related services, either directly or in coordination with others, that are responsive to the needs of the YBS farmers and ranchers in the territory. Examples include customized loan underwriting standards, loan guarantee programs, fee waivers, or other credit enhancements commensurate with the credit risk approved by the board of directors.

(B) Coordination with other System institutions in the territory and other governmental and private sources who offer credit and services to YBS farmers and ranchers.

(iii) Marketing, outreach, and education. Implementation of effective outreach programs to attract and retain YBS farmers and ranchers, which may include the use of advertising campaigns, educational programs, and advisory committees comprised of YBS farmers and ranchers and/or a YBS mentoring program to better serve and understand the needs of this lending segment.

(2) Quantitative goals—

(i) Annual quantitative goals. Annual quantitative goals for credit to YBS farmers and ranchers based on an understanding of reliable demographic data for the lending territory. Direct lender associations must identify the sources of data used to establish the goals. Such goals must include at least one of the following:

(A) Loan volume and loan number goals for YBS farmers and ranchers in the territory;

(B) Percentage goals representative of the demographics for YBS farmers and ranchers in the territory;

(C) Percentage goals for loans made to new borrowers qualifying as YBS farmers and ranchers in the territory; or

(D) Goals for capital committed to loans made YBS farmers and ranchers in the territory.

(ii) Board of directors approval and review. Goals must be approved by the direct lender association's board of directors and reviewed quarterly with adjustments made as needed.

[88 FR 89285, Dec. 27, 2023]

§614.4170 General.

Direct lenders shall be responsible for the servicing of the loans that they make. However, loan participation agreements may designate specific loan servicing efforts to be accomplished by a participating institution. Each direct lender shall adopt loan servicing policies and procedures to assure that loans will be serviced fairly

and equitably for the borrower while minimizing the risk for the lender. Procedures shall include specific plans that help preserve the quality of sound loans and that help correct credit deficiencies as they develop.

(a) The Farm Credit Bank shall provide guidelines for the servicing of loans by the Federal land bank associations. The servicing may be accomplished either under the direct supervision of the bank or under delegated authority.

(b) The servicing of loans which are participated in by Farm Credit System institutions shall be in accordance with § 614.4325.

(c) In the development of loan servicing policies and procedures, the following criteria shall be included:

(1) *Term loans.* The objective shall be to provide borrowers with prompt and efficient service with respect to actions in such areas as personal liability, partial release of security, insurance requirements or adjustments, loan divisions or transfers, or conditional payments. Procedures shall provide for adequate inspections, reanalyses, reappraisals, controls on payment of insurance and taxes (and for payment when necessary), and prompt exercise of legal options to preserve the lender's collateral position or guard against loss. Loan servicing policies for rural home loans shall recognize the inherent differences between agricultural and rural home lending.

(2) *Operating loans.* The objective shall be to service such loans to assure disbursement in accordance with the basis of approval, repayment from the sources obligated or pledged, and to minimize risk exposure to the lender. Procedures shall require:

(i) The procurement of periodic operating data essential for maintaining control, for the proper analysis of such data, and prompt action as needed;

(ii) Inspections, reappraisals, and borrower visits appropriate to the nature and quality of the loan; and

(iii) Controls on insurance, margin requirements, warehousing, and the prompt exercise of legal options to preserve the lender's collateral position and guard against loss.

(3) *Legal entity loans.* In addition to the foregoing servicing objectives for term and operating loans, procedures for servicing these loans shall require procurement of data on changes in ownership, control, and management; review of business objectives, financing programs, organizational structure, and operating methods, and appropriate analysis of such changes with provision for action as needed.

[37 FR 11424, June 7, 1972, as amended at 40 FR 17745, Apr. 22, 1975. Redesignated at 46 FR 51878, Oct. 22, 1981 and amended at 48 FR 54475, Dec. 5, 1983; 51 FR 39502, Oct. 28, 1986; 57 FR 38250, Aug. 24, 1992; 61 FR 67187, Dec. 20, 1996. Redesignated at 75 FR 35968, June 24, 2010]

§ 614.4175 Uninsured voluntary and involuntary accounts.

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a System institution, may make voluntary advance conditional payments intended to be applied to future maturities. The monies in the advance conditional payment accounts may be available for return to the borrower in lieu of increasing his loan. System institutions may pay interest on advance conditional payments for the time the funds are held unapplied at a rate not to exceed the rate charged on the related loan(s). System institutions shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) System institutions may establish involuntary payment accounts including, but not limited to, funds held for the borrower, such as loan proceeds to be disbursed for which the borrower is obligated; the unapplied insurance proceeds arising from any insured loss; and total insurance premiums and applicable taxes collected in advance in connection with any loan.

[53 FR 35454, Sept. 14, 1988. Redesignated at 75 FR 35968, June 24, 2010]

Subpart E—Loan Terms and Conditions

SOURCE: 55 FR 24884, June 19, 1990, unless otherwise noted.

§ 614.4200 General requirements.

(a) *Terms and conditions.* (1) The terms and conditions of each loan made

by a Farm Credit bank or association shall be set forth in a written document or documents, such as a loan agreement, promissory note, or other instrument(s) appropriate to the type and amount of the credit extension, in order to establish loan conditions and performance requirements. Copies of all documents executed by the borrower in connection with the closing of a loan made under titles I or II of the Act shall be provided to the borrower at the time of execution and at any time thereafter that the borrower requests additional copies.

(2) The terms and conditions of all loans shall be adequately disclosed in writing to the borrower not later than loan closing. For loans made under titles I and II of the Act, the institution shall provide prompt written notice of the approval of the loan.

(3) Applicants shall be provided notification of the action taken on each credit application in compliance with the requirements of 12 CFR 202.9.

(b) *Security*. (1) Long-term real estate mortgage loans must be secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property. No funds shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance would exceed 85 percent (or 97 percent as provided in section 1.10(a) of the Act) of the appraised value of the real estate, except that a loan on which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate to the extent that the loan amount in excess of 85 percent is covered by such insurance. The real estate that is used to satisfy the loan-to-value limitation must be comprised primarily of agricultural or rural property, including agricultural land and improvements thereto, a farm-related business, a marketing or processing operation, a rural residence, or real estate used as an integral part of an aquatic operation.

(2) Notwithstanding the requirements of paragraph (b)(1) of this section, the lending institution may advance funds for the payment of taxes or insurance premiums with respect to the real estate, reschedule loan payments, grant partial releases of security interests in the real estate, and take other actions necessary to protect the lender's collateral position. Any action taken that results in exceeding the loan-to-value limitation shall be in accordance with a policy of the institution's board of directors and adequately documented in the loan file.

(3) Short- and intermediate-term loans may be secured or unsecured as the documented creditworthiness of the borrower warrants.

(4) In addition to the requirements in paragraph (b)(1) of this section, a long-term, non-farm rural home loan, including a revolving line of credit, shall be secured by a first lien on the property, except that it may be secured by a second lien if the institution also holds the first lien on the property. A short- or intermediate-term loan on a rural home, including a revolving line of credit, must be secured by a lien on the property unless the financing is provided exclusively for repairs, remodeling, or other improvements to the rural home, in which case the loan may be secured by other property or unsecured if warranted by the documented creditworthiness of the borrower.

(5) Except as provided in § 614.4231, loans made under title III of the Act may be secured or unsecured, as appropriate for the purpose of the loan and the documented creditworthiness of the borrower.

(c) *Loan amortization*. If a direct lender amortizes a loan over a period of time that is longer than the term to maturity under § 614.4000(a), § 614.4010(a), § 614.4030(a), § 614.41040(a), or § 614.4050(a)(1) or (2), it must establish a loan amortization schedule that is:

(1) Consistent with its loan underwriting standards adopted pursuant to § 614.4150; and

(2) Appropriate to the type and purpose of the loan, expected useful life of the asset being financed, and the repayment capacity of the borrower.

[62 FR 51014, Sept. 30, 1997, as amended at 85 FR 60694, Sept. 28, 2020]

§ 614.4231 Certain seasonal commodity loans to cooperatives.

Loans on certain commodities that are part of government programs shall comply with the criteria established for those programs. Security taken on program commodities shall be consistent with prudent lending practices and ensure compliance with the government program. The bank shall provide for periodic review by bank officials of any custodial activities and shall provide notice to the custodians that their activities are subject to review and examination by the Farm Credit Administration.

[62 FR 51015, Sept. 30, 1997]

§ 614.4232 Loans to domestic lessors.

Loans and financial assistance extended by banks for cooperatives and agricultural credit banks to domestic lessors to finance equipment or facilities leased by a stockholder of the bank shall be subject to the following terms and conditions:

(a) The term of the loan shall not be longer than the total period of the lease;

(b) The contract between the lessor and lessee shall establish that the leased assets are effectively under the control of the lessee and that such control shall continue in effect for essentially all of the term of the lease;

(c) The lessee must hold at least one share of stock or one participation certificate; and

(d) The leased equipment and facilities must be primarily for use in the lessee's operations in the United States.

[55 FR 24884, June 19, 1990, as amended at 64 FR 34517, June 28, 1999]

§ 614.4233 International loans.

Term loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act and § 613.3200 of this chapter to foreign or domestic parties who are not shareholders of the bank shall be subject to the following conditions:

(a) The loan shall be denominated in a currency to eliminate foreign exchange risk on repayment.

(b) The borrower's obligations shall be guaranteed or insured against default under such policies as are available in the United States and other countries. Exceptions may be made where a prospective borrower has had a longstanding successful business relationship with an eligible cooperative borrower or an eligible cooperative which is not a borrower if the prospective borrower has a high credit rating as determined by the bank.

(c) For a borrower in which a voting stockholder of the bank has a majority ownership interest, financing may be extended for the full value of the transaction; otherwise, financing may be extended only to approximate the percent of ownership.

[55 FR 24884, June 19, 1990, as amended at 55 FR 28886, July 16, 1990; 55 FR 50544, Dec. 7, 1990; 56 FR 5927, Feb. 14, 1991; 62 FR 4445, Jan. 30, 1997]

Subpart F—Collateral Evaluation Requirements

SOURCE: 59 FR 46730, Sept. 12, 1994, unless otherwise noted.

§ 614.4240 Collateral definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Abundance of caution,* when used to describe decisions to require collateral, means that the collateral is taken in circumstances in which:

(1) It is not required by statute, regulation, or the institution's policies; and

(2) A prudent lender would extend credit based on a borrower's income and/or other collateral, absent the real estate, and the decision to extend credit was, in fact, based on other sources of revenue or collateral.

(b) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(c) *Appraisal Foundation* means the Appraisal Foundation established on

November 30, 1987, by professional appraisal organizations, as a not-for-profit corporation under the laws of Illinois, in order to enhance the quality of professional appraisals.

(d) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) *Business loan* means a loan or other extension of credit to any corporation, general or limited partnership, business trust, joint venture, sole proprietorship, or other business entity (including entities and individuals engaged in farming enterprises).

(f) *Cost approach* means the process by which an evaluator establishes an indicated value by measuring the current market cost to construct a reproduction of or replacement for the improvements, minus the amount of depreciation (physical deterioration, or functional and/or external obsolescence) evident in the structure from all causes, plus the market value of the land.

(g) *Evaluation* means a study of the nature, quality, or utility of, interest in, or aspects of, an asset. An evaluation may take the form of a valuation or an appraisal.

(h) *Fee appraiser* means a qualified evaluator who is not an employee of the party contracting for the completion of the evaluation and who performs an evaluation on a fee basis. For purposes of this subpart, a fee appraiser may include a staff evaluator from another Farm Credit System institution only if the employing institution is not operating under joint management with the contracting institution. In addition, for purposes of personal and intangible collateral evaluations, the term ''fee appraiser'' includes, but is not limited to, certified public accountants, equipment dealers, grain buyers, livestock buyers, and auctioneers.

(i) *FIRREA* means the Financial Institutions Recovery, Reform, and Enforcement Act of 1989.

(j) *Highest and best use* means the reasonable and most probable use of the property that would result in the highest market value of vacant land or improved property, as of the date of valuation; or that use, from among reasonably probable and legally alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in the highest land value.

(k) *Income capitalization approach* means the procedure that values property by measuring the present value of the expected future benefits of property ownership. This value is derived from either:

(1) Capitalizing a single year's income expectancy or an annual average of several years' income expectancies at a market-derived capitalization rate that reflects a specific income pattern, return on investment, and change in the value of the investment; or

(2) Discounting the annual cashflows for the holding period and the reversion at a specified yield rate or specified yield rates which reflect market behavior.

(l) *Market value* means the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming neither is under duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(m) *Personal property*, for purposes of this subpart, means all tangible and movable property not considered real property or fixtures.

(n) *Qualified evaluator* means an individual who is competent, reputable, impartial, and has demonstrated sufficient training and experience to properly evaluate property of the type that

is the subject of the evaluation. For the purposes of this definition, the term ''qualified evaluator'' includes an appraiser or valuator.

(o) *Real estate* means an identified parcel or tract of land, including improvements, if any.

(p) *Real estate-related financial transactions* means any transaction involving:

(1) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

(q) *Real property* means all interests, benefits, and rights inherent in the ownership of real estate.

(r) *Sales comparison approach* means the procedure that values property by comparing the subject property to similar properties located in relatively close proximity, having similar size and utility, and having been recently sold in arm's-length transactions (comparable sales). The sales comparison approach requires the evaluator to estimate the degree of similarity and difference between the subject property and comparable sales. Such comparison shall be made on the basis of conditions of sale, financing terms, market conditions, location, physical characteristics, and income characteristics. Appropriate adjustments shall be made to the sales price of the comparable property based on the identified deficiencies or superiorities of the subject property to arrive at a probable price for which the subject property could be sold on the date of the collateral evaluation.

(s) *State certified appraiser* means any individual who has satisfied the requirements for and has been certified as a real estate appraiser by a State or territory whose requirements for certification currently meet or exceed the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade on a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(t) *State licensed appraiser* means any individual who has satisfied the requirements for licensing and has been licensed as a real estate appraiser by a State or territory in which the licensing procedures comply with title XI of FIRREA and in which the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(u) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan, loan commitment, or other extensions of credit;

(2) For sales, leases, purchases, investments in, or exchanges of real property, the market value of the property interest involved; and

(3) For the pools of loans or interests in real property, the transaction value of the individual loans or the market value of the real property interests comprising the pool.

(v) *USPAP* means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Foundation.

(w) *Valuation* means the process of estimating a defined value of an identified interest or interests in a specific asset or assets as of a given date. A valuation results from the completion of a collateral evaluation that does not require an appraisal.

§ 614.4245 Collateral evaluation policies.

(a) The board of directors of each Farm Credit System institution that engages in lending or leasing secured by collateral shall adopt well-defined and effective collateral evaluation policies and standards, that comply with the regulations in this subpart, to ensure that collateral evaluations are:

(1) Sufficiently descriptive and detailed to provide ample support to the institution's related credit decisions;

(2) Performed based on criteria established for the purpose of determining the circumstances under which collateral evaluations will be required and when they will be required. Such criteria must, at a minimum:

(i) Establish when an institution will require a collateral appraisal completed under the USPAP rather than a collateral valuation; and

(ii) Take into account such factors as market trends, market volatility, and various types of credit, loan servicing, collection, and liquidation actions; and

(3) Completed by a qualified evaluator in an unbiased manner.

(b) The policies and standards required by this section shall, at a minimum, address the criteria outlined in §§ 614.4250 through 614.4267 of this subpart.

(c) A Federal land bank association shall, with the approval of its respective Farm Credit bank, adopt collateral evaluation policies that are consistent with the bank's policies and standards.

(d) An institution's board of directors may adopt specific collateral evaluation requirements, consistent with the regulations in this subpart, for loans designated as part of a minimum information program.

[59 FR 46730, Sept. 12, 1994, as amended at 62 FR 51015, Sept. 30, 1997]

§ 614.4250 Collateral evaluation standards.

(a) When real, personal, or intangible property is taken as security for a loan or is the subject of a lease, an evaluation of such property shall be performed in accordance with § 614.4260 and the institutions' policies and procedures. Such a collateral evaluation shall be identified as either a collateral valuation or a collateral appraisal. Specifically, all collateral evaluations must:

(1) Value the subject property based upon market value as defined in § 614.4240(l);

(2) Be presented in a written format;

(3) Consider the purpose for which the property will be used and the property's highest and best use, if different from the intended use;

(4) Be sufficiently descriptive to enable the reader to ascertain the reasonableness of the estimated market value and the rationale for the estimate;

(5) Provide sufficient detail (including an identification and description of the property) and depth of analysis to reflect the relevant characteristics and complexity of the subject property;

(6) Analyze and report, as appropriate, for real, intangible, and/or personal property, on:

(i) The current income producing capacity of the property;

(ii) A reasonable marketing period for the property;

(iii) The current market conditions and trends that will affect projected income, to the extent such conditions will affect the value of the property;

(iv) The appropriate deductions and discounts as they would apply to the property, including but not limited to, those based on the condition of the property, as well as the specialization of the operation and property; and

(v) Potential liabilities, including those associated with any hazardous waste or other environmental concerns; and

(7) Include in the evaluation report a certification that the evaluation was not based on a requested minimum valuation or specific valuation or approval of a loan.

(b) For purposes of determining appraisal value as required in section 1.10(a) of the Act, the definition of market value and the requirements of this subpart shall apply.

§ 614.4255 Independence requirements.

(a) *Prohibitions.* For all personal and intangible property, and for all real property exempted under § 614.4260(c) of this subpart, no person may:

(1) Perform evaluations in connection with transactions in which such person has a direct or indirect interest, financial or otherwise, in the loan or subject property;

(2) As a director, vote on or approve a loan decision on which such person performed a collateral evaluation; or

(3) As a director, perform a collateral evaluation in connection with any transaction on which such person made

or will be required to make a credit decision.

(b) *Officers and employees.* If the institution's internal control procedures required by § 618.8430 of this chapter include requirements for either a prior approval or post-review of credit decisions, officers and employees may:

(1) Participate in a vote or approval involving assets on which they performed a collateral evaluation; or

(2) Perform a collateral evaluation in connection with a transaction on which they have made or will be required to make a credit decision.

(c) *Real estate appraiser.* Except as provided in § 614.4260(c) of this subpart, all evaluations of real property that serve as the primary security for a loan shall be performed by a qualified real estate appraiser who has no direct or indirect interest, financial or otherwise, in the loan or subject property and is not engaged in the marketing, lending, collection, or credit decision processes of any of the following:

(1) A Farm Credit System institution making or originating the loan;

(2) A Farm Credit System institution operating under common management with the institution making or originating the loan; or

(3) A Farm Credit System institution purchasing an interest in the loan.

(d) *Fee appraisers.* Fee appraisers shall be engaged directly by the Farm Credit System institution or its agent, and shall have no direct or indirect interest, financial or otherwise, in the property or transaction. A Farm Credit System institution may accept a real estate appraisal that was prepared by an appraiser engaged directly by another Farm Credit System institution, by a United States Government agency, a Government-Sponsored Enterprise or by a financial institution subject to title XI of FIRREA.

(e) *Loan purchases.* No employee who, acting as a State licensed or State certified appraiser, performed a real estate appraisal on any collateral supporting a loan shall subsequently participate in any decision related to the loan purchase.

§ 614.4260 Evaluation requirements.

(a) *Valuation.* Valuations of personal and intangible property, as well as real property exempted under paragraph (c) of this section, shall be performed by qualified individuals who meet the established standards of this subpart and the Farm Credit System institution obtaining the collateral valuation.

(b) *Appraisal.* (1) Appraisals for real estate-related financial transactions with transaction values of more than $250,000 shall be performed by a qualified appraiser who is a State licensed or a State certified real estate appraiser.

(2) Appraisals for real estate-related financial transactions with transaction values of more than $1,000,000 shall be performed by a qualified appraiser who is a State certified real estate appraiser.

(c) *Appraisals not required.* An appraisal performed by a State certified or State licensed appraiser is not required for any real estate-related financial transaction in which any of the following conditions are met:

(1) The transaction value is $250,000 or less;

(2) The transaction is a ''business loan'' as defined in § 614.4240(e) that:

(i) Has a transaction value of $1,000,000 or less; and

(ii) Is not dependent on income derived from the sale or cash rental of real estate as the primary source of repayment;

(3) A lien on real property has been taken as collateral in an abundance of caution, and the application, when evaluated on the five basic credit factors, without considering the subject real estate, would support the credit decision that was based on other sources of repayment or collateral;

(4) A lien on real estate is not statutorily required and has been taken for purposes other than the real estate's value;

(5) Subsequent loan transactions (which include but are not limited to loan servicing actions, reamortizations, modifications of loan terms, and partial releases), provided that either:

(i) The transaction does not involve the advancement of new loan funds other than funds necessary to cover reasonable closing costs; or

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that

threatens the adequacy of the Farm Credit System institution's real estate collateral protection, even with the advancement of new loan funds;

(6) A Farm Credit System institution purchases a loan or an interest in a loan, pool of loans, or interests in real property, including mortgage-backed securities, provided that:

(i) The appraisal prepared for each loan, pooled loan, or real property interest, when originated, met the standards of this subpart, other Federal regulations adopted pursuant to FIRREA, or the requirements of the government-sponsored secondary market intermediaries under whose auspices the interest is sold; and

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that would threaten the Farm Credit System institution's collateral position, or

(7) A Farm Credit System institution makes or purchases a loan secured by real estate, which loan is guaranteed by an agency of the United States Government and is supported by an appraisal that conforms to the requirements of the guaranteeing agency.

To qualify for exceptions in paragraphs (c)(1) through (c)(7) of this section from the requirements of this subpart, the institution must have documentation justifying the use of such exceptions in the applicable loan file(s). In addition, the institution must document that the repayment of a ''business loan'' is not dependent on income derived from the sale or cash rental of real estate.

(d) *FCA-required appraisals.* The FCA reserves the right to require an appraisal under this subpart whenever it believes it is necessary to address safety and soundness issues.

(e) *Reciprocity.* The requirements of this subpart are satisfied by the use of State certified or State licensed appraisers from any State provided that:

(1) The appraiser is qualified to perform such appraisals;

(2) The applicable Farm Credit System institution has established policies providing for such interstate appraisals; and

(3) The applicable State appraiser licensing and certification agency recognizes the certification or license of the appraiser's State of permanent certification or licensure.

[59 FR 46730, Sept. 12, 1994, as amended at 60 FR 2687, Jan. 11, 1995]

§ 614.4265 Real property evaluations.

(a) Real estate shall be valued on the basis of market value.

(b) Market value shall be determined by a reasonable valuation method that:

(1) Considers the income capitalization approach, the sales comparison approach, and/or the cost approach, as appropriate, to determine market value;

(2) Explains and documents the elimination of any approach not used.

(3) Reconciles the market values of the applicable approaches; and

(c) At a minimum, the institution shall develop and document the evaluation of the income and debt servicing capacity for the property and operation where the transaction value exceeds $250,000 and the real estate taken as collateral:

(1) Is an integral part of and supports the principal source of loan repayment; or

(2) Is not an integral part of and does not support the principal source of loan repayment, but has demonstrable rental market appeal, is statutorily required, and fully or partially constitutes an integral part of an agricultural or aquatic operation.

(d) The income-earning and debt-servicing capacity established under paragraph (c) of this section on such properties shall be documented as part of the credit analysis for any related loan action, whether or not the income capitalization approach value is used as the basis for the market value conclusion stated in the evaluation report.

(e) Collateral closely aligned with, an integral part of, and normally sold with real estate (fixtures) may be included in the value of the real estate. All other collateral associated with the real estate, but designated as personal property, shall be evaluated as personal property in accordance with §§ 614.4250 and 614.4266.

(f) The evaluation shall properly identify all nonagricultural influences, including, but not limited to, urban development, mineral deposits, and commercial building development value,

and the reasoning supporting the evaluator's highest and best-use conclusion.

(g) Where an evaluation of real property is completed by a fee appraiser, as defined in § 614.4240(g), the institution's standards shall include provisions for periodic collateral inspections performed by the institution's account officer or appropriate designee.

[59 FR 46730, Sept. 12, 1994, as amended at 71 FR 65387, Nov. 8, 2006; 75 FR 35968, June 24, 2010]

§ 614.4266 Personal and intangible property evaluations.

(a) Personal property and intangibles shall be valued on the basis of market value in accordance with the institution's evaluation standards and policies.

(b) Personal property evaluations shall include a source of comparisons of value (i.e., equipment dealer listings, Blue Book, market sales reports, etc.) and a description of the property being evaluated, including location of the property and, where applicable, quantity, species/variety, measure/weight, value per unit and in total, type of identification (such as brand, bill of lading, or warehouse receipt), quality, condition, and date.

(c) Evaluations of intangibles shall include a review and description of the documents supporting the property interests and the marketability of the intangible property, including applicable terms, conditions, and restrictions contained in the document that would affect the value of the property.

(d) Where an evaluation of personal or intangible property is completed by a fee appraiser, as defined in § 614.4240(g), the institution's standards shall include provisions for periodic collateral inspections and verification by the institution's account officer or appropriate designee.

(e) When a Farm Credit System institution deems an appraisal necessary, personal or intangible property shall be appraised in accordance with procedures and standards established by the institution by individuals deemed qualified by the institution to complete the work under the USPAP Competency and Ethics Provisions.

[59 FR 46730, Sept. 12, 1994, as amended at 59 FR 50964, Oct. 6, 1994]

§ 614.4267 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a real estate-related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee evaluators, including appraisers, performing evaluations in connection with real, personal, or intangible property taken as collateral in connection with extensions of credit must meet the qualification requirements of this subpart. However, an evaluator (as defined in § 614.4240(n)) may not be considered competent solely by virtue of being certified, licensed, or accredited. Any determination of competency shall be based on the individual's experience and educational background as they relate to the particular evaluation assignment for which such individual is being considered.

Subpart G [Reserved]

Subpart H—Loan Purchases and Sales

SOURCE: 57 FR 38247, Aug. 24, 1992, unless otherwise noted.

§ 614.4325 Purchase and sale of interests in loans.

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

(1) *Interests in loans* means ownership interests in the principal amount, interest payments, or any aspect of a loan transaction and transactions involving a pool of loans, including servicing rights.

(2) *Lead lender* means a lending institution having a direct contractual relationship with a borrower to advance funds, which institution sells or assigns an interest or interests in such loan to one or more other lenders.

(3) *Loan* means any extension of credit or similar financial assistance of the type authorized under the Act, such as guarantees, letters of credit, and other similar transactions.

(4) *Participating institution* means an institution that purchases a participation interest in a loan originated by another lender.

(5) *Sale with recourse* means a sale of a loan or an interest in a loan in which the seller:

(i) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(ii) Has an obligation to make payments of principal or interest to any party resulting from:

(A) Default on the payment of principal or interest on the loan by the borrower or guarantor or any other deficiencies in the obligor's performance;

(B) Changes in the market value of the assets after transfer;

(C) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(D) Any other cause, except the retention at servicing rights alone shall not constitute recourse.

(6) *Subordinated participation interest* means an interest in a loan that bears the first risk of loss, including the retention of such an interest when a loan is sold to a pooler certified by the Federal Agricultural Mortgage Corporation pursuant to title VIII of the Act, or an interest in a pool of subordinated participation interests purchased to satisfy the requirements of title VIII of the Act with respect to a loan sold to such a certified pooler.

(b) *Authority to purchase and sell interests in loans.* Loans and interests in loans may only be sold in accordance with each institution's lending authorities, as set forth in subpart A of this part. No Farm Credit System institution may purchase any interest in a loan from an institution that is not a Farm Credit System institution, except:

(1) For the purpose of pooling and securitizing such loans under title VIII of the Act;

(2) Purchases of a participation interest that qualifies under the institution's lending authority, as set forth in subpart A of this part, and meets the requirements of §614.4330 of this subpart;

(3) Loans purchased from the Federal Deposit Insurance Corporation, provided that the Farm Credit System institution with direct lending authority under title I, II or III of the Act:

(i) Conducts a thorough due diligence prior to purchase to ensure that the loan, or pool of loans, qualifies under the institution's lending authority as set forth in subpart A of this part, and meets scope of financing and eligibility requirements in subpart A or subpart B of part 613;

(ii) Obtains funding bank approval if a Farm Credit System association purchases loans or pools of loans that exceed 10 percent of total its capital;

(iii) Establishes a program whereby each eligible borrower of the loan purchased is offered an opportunity to acquire the institution's required minimum amount of voting stock;

(iv) Determines whether each loan purchased, except for loans purchased that could be financed only by a bank for cooperatives under title III of the Act, is a distressed loan as defined in §617.7000, and provides borrowers of purchased loans who acquire voting stock the rights afforded in §617.7000, subparts A, and D through G if the loan is distressed; and

(v) Divests eligible purchased loans when the borrowers elect not to acquire stock under the program offered in paragraph (b)(3)(iii) of this section in the same manner it would divest loans under its current business practices.

(vi) Includes information on loans purchased under authority of this section in the Reports of Condition and Performance required under §621.12 of this chapter, in the format prescribed by FCA reporting instructions.

(c) *Policies.* Each Farm Credit System institution that is authorized to sell or purchase interests in loans under subpart A of this part shall exercise that authority in accordance with a policy

adopted by its board of directors that addresses the following matters:

(1) The types of purchasers to which the institution is authorized to sell interests in loans;

(2) The types of loans in which the institution may purchase or sell an interest and the types of interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of interests in loans:

(4) Such limitations on the aggregate principal amount of interests in loans that the institution may purchase from a single institution as are necessary to diversify risk, and such limitations on the aggregate amount the institution may purchase from all institutions as are necessary to assure that service to the territory is not impeded;

(5) Provision for the identification and reporting of loans in which interests are sold or purchased;

(6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent credit judgment; and

(7) Any limitations or conditions to which sales or purchases are subject that the board deems appropriate, including arbitration.

(d) *Purchase and sale agreements.* Agreements to purchase or sell an interest in a loan shall, at a minimum:

(1) Identify the particular loan(s) to be covered by the agreement;

(2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Identify the nature of the interest(s) sold or purchased;

(5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(6) Contain any terms necessary for the appropriate administration of the loan and the protection of the interests of the Farm Credit System institution.

(e) *Independent credit judgment.* Each institution that purchases an interest in a loan shall make a judgment on the creditworthiness of the borrower that is independent of the originating or lead lender and any intermediary seller or broker prior to the purchase of the interest and prior to any servicing action that alters the terms of the original agreement, which judgment shall not be delegated to any person(s) not employed by the institution. A Farm Credit System institution that purchases a loan or any interest therein may use information, such as appraisals or collateral inspections, furnished by the originating or lead lender, or any intermediary seller or broker; however, the purchasing Farm Credit System institution shall independently evaluate such information when exercising its independent credit judgment. No employee who performed a real estate appraisal on any collateral supporting a loan shall participate in the decision to purchase that loan. The independent credit judgment shall be documented by a credit analysis that considers factors set forth in the loan underwriting standards adopted pursuant to § 614.4150 of this part and is independent of the originating institution and any intermediary seller or broker. The credit analysis shall consider such credit and other borrower information as would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions shall adopt procedures to ensure that the interests of their respective shareholders are protected in participation between such institutions.

(f) *Limitations.* The aggregate principal amount of interests in loans purchased from a single lead lender and the aggregate principal amount of interests in loans purchased from other institutions shall not exceed the limits set in the institution's policy.

(g) *Sales with recourse.* When a loan or interest in a loan is sold with recourse, it shall be accorded the following treatment:

(1) The loan shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s), for the purpose of determining whether credit extensions to a borrower are within the lending limits established in subpart J of this part.

(2) The amount of the loan subject to the recourse agreement shall be considered a loan sold with recourse for the purpose of computing permanent capital ratios.

(h) *Transactions through agents.* Transactions pertaining to purchases of loans, including the judgement on creditworthiness, may be performed through an agent, provided that:

(1) The institution establishes the necessary criteria in a written agency agreement that outlines, at a minimum, the scope of the agency relationship and obligates the agent to comply with the institution's underwriting standards;

(2) The institution periodically reviews the agency relationship to determine if the agent's actions are in the best interest of the institution;

(3) The agent must be independent of the seller or intermediate broker in the transaction; and

(4) If an association's funding bank serves as its agent, the agency agreement must provide that:

(i) The association can terminate the agreement upon no more than 60 days notice to the bank;

(ii) The association may, in its discretion, require the bank to purchase from the association any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan underwriting standards.

[57 FR 38247, Aug. 24, 1992, as amended at 58 FR 40321, July 28, 1993; 62 FR 51015, Sept. 30, 1997; 64 FR 34517, June 28, 1999; 67 FR 1285, Jan. 10, 2002; 76 FR 30250, May 25, 2011]

§614.4330 Loan participations.

Agreements to purchase or sell a participation interest shall be subject to the provisions of §614.4325 of this subpart, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a loan shall, in addition to meeting the requirements of §614.4325(d) of this subpart, at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lender, and/or the servicing institution, if different from the lead lender.

(2) Provide for loan servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of borrower distress or default;

(4) Provide for sharing of risk;

(5) Set forth conditions for the offering and acceptance of the loan participation and termination of the agreement;

(6) Provide for sharing of fees, interest charges, and costs between participating institutions;

(7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;

(8) Specify whether the contract is assignable by either party; and

(9) Provide for the issuance of certificates evidencing a participation interest in a loan.

(b) *Intrasystem participations.* Loans participated between or among Farm Credit System institutions shall meet the borrower eligibility, membership, loan term, loan amount, loan security, and stock purchase requirements of the originating lender.

[57 FR 38247, Aug. 24, 1992, as amended at 67 FR 1285, Jan. 10, 2002]

§614.4335 Borrower stock requirements.

(a) *In general.* Except as provided in paragraph (b) of this section, a borrower shall meet the minimum borrower stock purchase requirements as a condition of obtaining a loan.

(b) *Loans designated for sale into a secondary market.* (1) An institution's bylaws may provide that the institution's minimum borrower stock purchase requirements do not apply if a loan is designated, at the time it is made, for sale into a secondary market.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180–day period that begins on the date of designation, the institution's minimum borrower stock purchase requirements shall apply.

(c) *Retirement of borrower stock*—(1) *In general.* Borrower stock may be retired only if the institution meets the minimum permanent capital requirements imposed by the FCA pursuant to the

Act or regulations and, except as provided in paragraph (c)(2) of this section, in accordance with the following:

(i) Borrower stock may be retired if the entire loan is sold without recourse, provided that when the loan is sold without recourse to another Farm Credit System institution, the borrower may elect to hold stock in either the selling or purchasing institution.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirements for the interest retained.

(iv) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(2) *Loans sold into a secondary market.* An institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market.

(d) *Applicability.* In the case of a loan sold into a secondary market under title VIII of the Act, paragraphs (b)(1) and (c)(2) of this section apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

[62 FR 63646, Dec. 2, 1997]

§ 614.4337 Disclosure to borrowers.

When a loan or an interest in a loan other than a participation interest is sold with servicing rights, the disclosure shall be made to the borrower in accordance with this section:

(a) The selling institution shall disclose to the borrower at least 10 days prior to the borrower's next payment date;

(1) The name, address, and telephone number of the purchasing institution;

(2) The name and address of the party to whom payment is to be made;

(3) A description of the impact of the sale on statutory borrower rights after the sale;

(4) Any terms in the agreement that would permit a purchaser to change the terms or conditions of the loan.

(b) A Farm Credit System institution that purchases a loan or a non-participation interest therein shall not take any servicing action that adversely affects the borrower until it ensures that disclosure has been made to the borrower of:

(1) The name, address, and telephone number of the purchasing institution; and

(2) The address where the payment should be sent.

Subpart I—Loss-Sharing Agreements

§ 614.4340 General.

(a) Upon the approval of the board of directors of the respective Farm Credit System institutions, any System bank, association, or service corporation or service association may enter into an agreement to share loan and other losses with any other institution(s) of the System. As appropriate, a loss-sharing agreement may contain provisions relating to definitions of terms, terms and conditions for activation, determinations of assessment formulas, limitations on assessments, reimbursements, administration, arbitration, and provisions for amendment and termination.

(b) System institutions may agree among themselves to share losses for the purpose of protecting against the impairment of capital stock or participation certificates, or for any other purpose. Agreements may provide for sharing losses that arise in the future or that were recognized by one or more of the signatory institutions before the date of the agreement. Agreements may contain provisions that are not entirely reciprocal among the signatories to the agreement. Loss-sharing agreements can provide for the sharing of loan losses, operating losses, casualty losses, losses on high risk assets, or any other losses.

[49 FR 48910, Dec. 17, 1984, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

§ 614.4345 Guaranty agreements.

Guaranty agreements under which a percentage of the risk associated with specific loans is assumed may be entered into by or among System banks and associations.

[49 FR 48910, Dec. 17, 1984, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

Subpart J—Lending and Leasing Limits

SOURCE: 58 FR 40321, July 28, 1993, unless otherwise noted.

§ 614.4350 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity to which an institution has made a loan or a commitment to make a loan either directly or indirectly. Excluded are a Farm Credit System association or other financing institution that comply with the criteria in section 1.7(b) of the Act and the regulations in subpart P of this part. For the purposes of this subpart, the term ''borrower'' includes any customer to whom an institution has made a lease or a commitment to make a lease.

(b) *Commitment* means a legally binding obligation to extend credit, enter into lease financing, purchase or participate in loans or leases, or pay the obligation of another, which becomes effective at the time such commitment is made.

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender. This includes participation interests. The term ''loan'' includes loans and leases outstanding, obligated but undisbursed commitments to lend or lease, contracts of sale, notes receivable, other similar obligations, guarantees, and all types of leases. An institution ''makes a loan or lease'' when it enters into a commitment to lend or lease, advances new funds, substitutes a different borrower or lessee for a borrower or lessee who is released, or where any other person's liability is added to the outstanding loan, lease or commitment.

(d) *Primary liability* means an obligation to repay that is not conditioned upon an unsuccessful prior demand on another party.

(e) *Secondary liability* means an obligation to repay that only arises after an unsuccessful demand on another party.

[58 FR 40321, July 28, 1993, as amended at 64 FR 34517, June 28, 1999]

§ 614.4351 Computation of lending and leasing limit base.

(a) *Lending and leasing limit base.* An institution's lending and leasing limit base is composed of the total capital (tier 1 and tier 2) of the institution, as defined in § 628.2 of this chapter, with adjustments applicable to the institution provided for in § 628.22 of this chapter, and with the following further adjustments:

(1) [Reserved]

(2) Eligible third-party capital that is required to be excluded from total capital under § 628.23 of this chapter may be included in the lending limit base.

(b) *Timing of calculation.* The lending limit base will be calculated on a monthly basis as of the preceding month end.

[58 FR 40321, July 28, 1993, as amended at 59 FR 37403, July 22, 1994; 64 FR 34517, June 28, 1999; 70 FR 35348, June 17, 2005; 70 FR 53907, Sept. 13, 2005; 81 FR 49772, July 28, 2016; 86 FR 54356, Oct. 1, 2021]

§ 614.4352 Farm Credit Banks and agricultural credit banks.

(a) *Farm Credit Banks.* No Farm Credit Bank may make or discount a loan to a borrower if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceed 15 percent of the bank's lending and leasing limit base.

(b) *Agricultural credit banks.* (1) No agricultural credit bank may make or discount a loan to a borrower under the authority of title I of the Act if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceed 15 percent of the bank's lending and leasing limit base.

(2) No agricultural credit bank may make or discount a loan to a borrower under the authority of title III of the Act if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceed the lending and leasing limits prescribed in § 614.4355 of this subpart.

[58 FR 40321, July 28, 1993, as amended at 64 FR 34517, June 28, 1999; 76 FR 29997, May 24, 2011]

§ 614.4353 Direct lender associations.

No direct lender association may make a loan to a borrower if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceed 15 percent of the association's lending and leasing limit base.

[58 FR 40321, July 28, 1999, as amended at 64 FR 34517, June 28, 1999; 76 FR 29997, May 24, 2011]

§ 614.4354 [Reserved]

§ 614.4355 Banks for cooperatives.

No bank for cooperatives may make a loan if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds the following percentages of the lending and leasing limit base of the bank:

(a) *Basic limit.* (1) Term loans to eligible cooperatives: 25 percent.

(2) Term loans to foreign and domestic parties: 10 percent.

(3) Lease loans qualifying under § 614.4020(a)(3) and applying to the lessee: 25 percent.

(4) Standby letters of credit qualifying under § 614.4810: 35 percent.

(5) Guarantees qualifying under § 614.4800: 35 percent.

(6) Seasonal loans exclusive of commodity loans qualifying under § 614.4231: 35 percent.

(7) Foreign trade receivables qualifying under § 614.4700: 50 percent.

(8) Commodity loans qualifying under § 614.4231: 50 percent.

(9) Export and import letters of credit qualifying under § 614.4720: 50 percent.

(b) *Total limit.* (1) The sum of term and seasonal loans exclusive of commodity loans qualifying under § 614.4231: 35 percent.

(2) The sum of paragraphs (a)(1) through (a)(9) of this section: 50 percent.

[58 FR 40321, July 28, 1993, as amended at 62 FR 51015, Sept. 30, 1997; 64 FR 34517, June 28, 1999; 71 FR 65387, Nov. 8, 2006]

§ 614.4356 Farm Credit Leasing Services Corporation.

The Farm Credit Leasing Services Corporation may enter into a lease agreement with a lessee if the consolidated amount of all leases and undisbursed commitments to that lessee or any related entities does not exceed 15 percent of its lending and leasing limit base.

[64 FR 34517, June 28, 1999,as amended at 76 FR 29997, May 24, 2011]

§ 614.4357 Banks for cooperatives look-through notes.

Where a bank for cooperatives makes a loan to an eligible borrower that is secured by notes of individuals or business entities, the basic lending limits provided in § 614.4355 may be applied to each original notemaker rather than to the loan to the eligible borrower, if:

(a) Each note is current and carries a full recourse endorsement or unconditional guarantee by the borrower;

(b) The bank determines the financial condition, repayment capacity, and other credit factors of the loan to the original maker reasonably justify the credit granted by the endorser; and

(c) The loans are fully supported by documented loan files, which include, at a minimum:

(1) A credit report supporting the bank's finding that the financial condition, repayment capacity, and other factors of the maker of the notes being pledged justify the credit extended by the bank and/or endorser;

(2) A certification by a bank officer designated for that purpose by the loan or executive committee that the financial responsibility of the original notemaker has been evaluated by the loan committee and the bank is relying primarily on each such maker for the payment of the obligation; and

(3) Other credit information normally required of a borrower when making and administering a loan.

[58 FR 40321, July 28, 1993. Redesignated at 64 FR 34517, June 28, 1999]

§614.4358 Computation of obligations.

(a) *Inclusions.* The computation of total loans to each borrower for the purpose of computing their lending and leasing limit shall include:

(1) The total unpaid principal of all loans and lease balances outstanding and the total amount of undisbursed commitments except as excluded by paragraph (b) of this section. This amount shall include loans that have been charged off on the books of the institution in whole or in part but have not been collected, except to the extent that such amounts are not legally collectible;

(2) Purchased interests in loans, including participation interests, to the extent of the amount of the purchased interest, including any undisbursed commitment;

(3) Loans attributed to a borrower in accordance with §614.4359.

(b) *Exclusions.* The following loans when adequately documented in the loan file, may be excluded from loans to a borrower subject to the lending and leasing limit:

(1) Any loan or portion of a loan that carries a full faith and credit performance guaranty or surety of any department, agency, bureau, board, commission, or establishment of the United States government, provided there is no evidence to suggest that the guaranty has become unenforceable and the institution can demonstrate that it is in compliance with the terms and conditions of the guaranty.

(2) Any loan or portion of a loan guaranteed by a Farm Credit System institution, pursuant to the provisions of §614.4345 on guaranty agreements. This exclusion does not apply to the institution providing the guaranty.

(3) Any loan or portion of a loan that is secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other obligations guaranteed as to principal and interest by the United States government, provided the loans are fully secured by the current market value of such obligations. If the market value of the collateral declines to below the balance of the loan, and the entire loan, individually, or when combined with other loans and undisbursed commitments to or attributed to the borrower, causes the borrower's total indebtedness to exceed the institution's lending limit, the institution shall have 5 business days to bring the loan into conformance before it shall be deemed to be in violation of the lending limit.

(4) Interests in loans sold, including participation interests, when the sale agreement meets the following requirements:

(i) The interest must be sold without recourse; and

(ii) The agreement under which the interest is sold must provide for the sharing of all payments of principal, collection expenses, collateral proceeds, and risk of loss on a pro rata basis according to the percentage interest in the principal amount of the loan. Agreements that provide for the pro rata sharing to commence at the time of default or similar event, as defined in the agreement under which the interest is sold, shall be considered to be pro rata agreements, notwithstanding the fact that advances are made and payments are distributed on a basis other than pro rata prior to that time.

(5) Interests in leases sold when the sale agreement provides that:

(i) The interest sold must be:

(A) An undivided interest in all the lease payments or the residual value of all the leased property; or

(B) A fractional undivided interest in the total lease transaction;

(ii) The interest must be sold without recourse; and

(iii) Sharing of all lease payments must be on a pro rata basis according to the percentage interest in the lease payments.

(6) Loans sold in their entirety to a pooler certified by the Federal Agricultural Mortgage Corporation, if an interest in a pool of subordinated participation interests is purchased to satisfy

the requirements of title VIII of the Act.

[58 FR 40321, July 28, 1993. Redesignated and amended at 64 FR 34517, June 28, 1999; 67 FR 1285, Jan. 10, 2002]

§ 614.4359 Attribution rules.

(a) For the purpose of applying the lending and leasing limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of the following three conditions exist:

(1) *Liability.* (i) The borrower has primary or secondary liability on a loan made to the related borrower. The amount of such loan attributable to the borrower is limited to the amount of the borrower's liability.

(ii) This section does not require attribution of a guarantee taken out of an abundance of caution. To qualify for the abundance of caution exception to the requirements of this subpart, the institution must document in the loan file that the loan, when evaluated under the loan underwriting standards adopted pursuant to § 614.4150 of this part without considering the guarantee, would support the credit decision under the same basic terms and conditions.

(iii) For the banks for cooperatives and agricultural credit banks operating under title III authorities of the Act, look-through notes are exempt from the lending limit provisions provided they meet the criteria of § 614.4357.

(2) *Financial interdependence.* The operations of a borrower and related borrower are financially interdependent. Financial interdependence exists if the borrower is the primary source of repayment for a related borrower's loan, or if the operations of the borrower and the related borrower are commingled.

(i) The borrower shall be considered the primary source of repayment on the loan to the related borrower if the borrower is obligated to supply 50 percent or more of the related borrower's annual gross receipts, *and* reliance on the income from one another is such that, regardless of the solvency and liquidity of the borrower's operations, the debt service obligation of the related borrower could not be met if income flow from the borrower is interrupted or terminated. For the purpose of this paragraph, gross receipts include, but are not limited to, revenues, intercompany loans, dividends and capital contributions.

(ii) The assets or operations of the borrower and related borrower are considered to be commingled if they cannot be separated without materially impacting the economic survival of the individual operations and their ability to repay their loans.

(3) *Control.* The borrower directly or indirectly controls the related borrower. A borrower is deemed to control a related borrower if either paragraph (a)(3)(i) or (a)(3)(ii) of this section exist:

(i) The borrower, directly or acting through one or more other persons, owns 50 percent or more of the stock of the related borrower; or

(ii) The borrower, directly or acting through one or more other persons, owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and meets at least one of the following three conditions:

(A) The borrower shares a common directorate or management with a related borrower. A common directorate is deemed to exist when a majority of the directors, trustees, or other persons performing similar functions of one borrower also serves the other borrower in a like capacity. A common management is deemed to exist if any employee of the borrower holds the position of chief executive officer, chief operating officer, chief financial officer, or an equivalent position in the related borrower's organization.

(B) The borrower controls in any manner the election of a majority of directors of a related borrower.

(C) The borrower exercises or has the power to exercise a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping.

(b) Each institution shall make provisions for appropriately designating loans to a related borrower that are combined with the borrower's loan and attributed to the borrower to ensure

that loans to the borrower are within the lending and leasing limits.

(c) *Attribution rules table.* For the purposes of applying the lending and leasing limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of three attribution rules are met as outlined in Table 1.

TABLE 1

Attribution rule	Criteria per § 614.4359	Attribute
(A) Liability	Borrower has primary or secondary liability	Yes.*
*to the extent of the borrower's liability.	Borrower's liability is taken out of an abundance of caution	No.*
	Look-through notes (BC only)	No.
(B) Financial Interdependence	Source of Repayment:	
(Economic survival of the borrower's operation will materially impact economic survival of the related borrowers operation).	Borrower is obligated to supply 50 percent or more of related borrower's annual gross receipts, *and* reliance on the income from one another is such that the debt service of the related borrower could not be met if income flow from the borrower is interrupted or terminated.	Yes.
	Commingled Operations:	
	Assets or operations of the borrowers are commingled and cannot be separated without materially impacting the borrowers' repayment capacity	Yes.
(C) Control	The borrower owns 50 percent or more of the stock of the related borrower.	Yes.
(The borrower, directly or indirectly, controls the related borrower).	The borrower owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and (1) Shares a common directorate or management with a related borrower, or (2) Controls the election of a majority of directors of a related borrower, or (3) Exercises a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping.	Yes.

[58 FR 40321, July 28, 1993, as amended at 62 FR 51015, Sept. 30, 1997. Redesignated and amended at 64 FR 34517, June 28, 1999]

§ 614.4360 Lending and leasing limit violations.

(a) Each loan, except loans that are grandfathered under the provisions of § 614.4361, shall be in compliance with the lending and leasing limit on the date the loan is made, and at all times thereafter. Except as provided for in paragraph (b) of this section, loans which are in violation of the lending and leasing limit shall comply with the provisions of § 615.5090 of this chapter.

(b) Under the following conditions a loan that violates the lending and leasing limit shall be exempt from the provisions of § 615.5090 of this chapter:

(1) A loan in which the total amount of principal outstanding and undisbursed commitments exceed the lending and leasing limit because of a decline in permanent capital after the loan was made.

(2) Loans on which funds are advanced pursuant to a commitment that was within the lending and leasing limit at the time the commitment was made, even if the lending and leasing limit subsequently declines.

(3) A loan that exceeds the lending and leasing limit as a result of the consolidation of the debt of two or more borrowers as a consequence of a merger or the acquisition of one borrower's operations by another borrower. Such a loan may be extended or renewed, for a period not to exceed 1 year from the date of such merger or acquisition, during which period the institution may advance and/or readvance funds not to exceed the greater of:

(i) 110 percent of the advances to the borrower in the prior calendar year; or

(ii) 110 percent of the average of the advances to the borrower in the past 3 calendar years.

(c) For all lending and leasing limit violations except those exempted under § 614.4360(b)(3), within 90 days of the

identification of the violation, the institution must develop a written plan prescribing the specific actions that will be taken by the institution to bring the total amount of loans and commitments outstanding or attributed to that borrower within the new lending and leasing limit, and must document the plan in the loan file.

(d) All leases, except those permitted under §614.4361, reading ''effective date of this subpart'' in §614.4361(a) and ''effective date of these regulations'' in §614.4361(b) as ''effective date of this amendment,'' must comply with the lending and leasing limit on the date the lease is made, and at all times after that.

(e) Nothing in this section limits the authority of the FCA to take administrative action, including, but not limited to, monetary penalties, as a result of lending and leasing limit violations.

[58 FR 40321, July 28, 1993. Redesignated and amended at 64 FR 34517, June 28, 1999]

§614.4361 Transition.

(a) A loan (not including a commitment) made or attributed to a borrower prior to the effective date of this subpart, which does not comply with the limits contained in this subpart, will not be considered a violation of the lending and leasing limits during the existing contract terms of such loans. A new loan must conform with the rules set forth in this subpart. A new loan includes but is not limited to:

(1) Funds advanced in excess of existing commitment;

(2) A different borrower is substituted for a borrower who is subsequently released; or

(3) An additional person becomes an obligor on the loan.

(b) A commitment made prior to the effective date of these regulations which exceeds the lending and leasing limit may be funded to the full extent of the legal commitment. Any advances that exceed the lending and leasing limit are subject to the provisions prescribed in §614.4360.

[58 FR 40321, July 28, 1993. Redesignated and amended at 64 FR 34517, 34518, June 28, 1999]

§614.4362 Loan and lease concentration risk mitigation policy.

The board of directors of each title I, II, and III System institution must adopt and ensure implementation of a written policy to effectively measure, limit and monitor exposures to concentration risks resulting from the institution's lending and leasing activities.

(a) *Policy elements.* The policy must include:

(1) A purpose and objective;

(2) Clearly defined and consistently used terms;

(3) Quantitative methods to measure and limit identified exposures to significant and reasonably foreseeable loan and lease concentration risks (as set forth in paragraph (b) of this section); and

(4) Internal controls that delineate authorities delegated to management, authorities retained by the board, and a process for addressing exceptions and reporting requirements.

(b) *Quantitative methods.* (1) At a minimum, the quantitative methods included in the policy must measure and limit identified exposures to significant and reasonably foreseeable concentration risks emanating from:

(i) A single borrower;

(ii) A single-industry sector;

(iii) A single counterparty; or

(iv) Other lending activities unique to the institution because of its territory, the nature and scope of its activities and its risk-bearing capacity.

(2) In determining concentration limits, the policy must consider other risk factors that could identify significant and reasonably foreseeable loan and lease losses. Such risk factors could include borrower risk ratings, the institution's relationship with the borrower, the borrower's knowledge and experience, loan structure and purpose, type or location of collateral (including loss given default ratings), loans to emerging industries or industries outside of an institution's area of expertise, out-of-territory loans, counterparties, or weaknesses in due diligence practices.

[76 FR 29997, May 24, 2011]

Subparts K–L [Reserved]

Subpart M—Loan Approval Requirements

§ 614.4450 General requirements.

Authority for loan approval is vested in the Farm Credit banks and associations.

[51 FR 41947, Nov. 20, 1986]

§ 614.4460 Loan approval responsibility.

Approval of the following loans is the responsibility of each district board of directors. The responsibility may be discharged by prior approval of such loans by the appropriate bank board, or establishment of a policy under which the authority to approve such loans is delegated to bank management (except paragraphs (d) and (e) of this section which cannot be delegated to management). If the approval of such loans is to be delegated to bank management, the loans are to be submitted promptly for post review by the bank board and a report disclosing all material facts relating to the credit relationship involved shall be submitted annually by bank management to the district board.

(a) Loans to a member of the Farm Credit Administration Board.

(b) Loans to a member of the district board.

(c) Loans to a cooperative of which a member of a bank board of directors is a member of the board of directors, an officer, or employee.

(d) Loans to the president of a Farm Credit bank.

(e) Loans to employees of the Farm Credit Administration.

(f) Loans where directors, officers or employees designated above:

(1) Are to receive proceeds of the loan in excess of an amount prescribed by an appropriate bank board, or

(2) Are stockholders or owners of equity in a legal entity to which the loan is to be made wherein they have a significant personal or beneficial interest in the loan proceeds thereof or the security, or

(3) Are endorsers, guarantors or comakers in excess of an amount prescribed by an appropriate bank board.

[38 FR 27837, Oct. 9, 1973, as amended at 39 FR 29585, Aug. 16, 1974. Redesignated at 46 FR 51878, Oct. 22, 1981, and amended at 51 FR 41947, Nov. 20, 1986; 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989; 56 FR 2674, Jan. 24, 1991]

§ 614.4470 Loans subject to bank approval.

(a) The following loans (unless such loans are of a type prohibited under part 612) shall be subject to prior approval of the bank supervising the association in which the loan application originates:

(1) Loans to a director of the association.

(2) Loans to a director of an association which is under joint management when the application originates in one of the associations.

(3) Loans to an employee of the association.

(4) Loans to an employee of an association which is under joint management when the application originates in one of the associations.

(5) Loans to bank employees when the application originates in one of the associations supervised by the employing bank.

(b) Loans to any borrower shall be subject to the prior approval of the bank supervising the association in which the loan application originates whenever a director or an employee of the association or an employee of the bank supervising the association:

(1) Will receive proceeds of the loan in excess of the amount prescribed by the supervising bank board, or

(2) Has a significant personal or beneficial interest in the loan, the proceeds, or the security, or controls the borrower, or

(3) Is an endorser, guarantor, or comaker with respect to the loan in excess of an amount prescribed by the supervising bank board.

(c) Any loan which will result in any one borrower being obligated (as defined in subpart J of this part) in excess of an amount established by the supervising bank under its policies for delegation of authority to associations

shall be subject to prior approval of the supervising bank.

[47 FR 49832, Nov. 3, 1982, as amended at 58 FR 40324, July 28, 1993; 60 FR 20010, Apr. 24, 1995]

Subpart N [Reserved]

Subpart O—Special Lending Programs

§ 614.4525 General.

(a) To provide the best possible credit service to farmers, ranchers, and producers or harvesters of aquatic products, bank and association boards may adopt policies permitting the bank or association to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank or association, pursuant to its board policies, may enter into an agreement with third parties that will accrue to the benefit of the borrower and the lender to perform functions in the making or servicing of loans other than the evaluation and approval of loans. When such an agreement is developed, and the territory covered by the agreement extends outside the territorial limits of the originating association or bank, the written consent of all affected banks or associations is required. Reasonable compensation may be paid for services rendered.

(c) Production credit associations and agricultural credit associations may enter into agreements with private dealers or cooperatives permitting them to take applications for loans from the association to purchase farm or aquatic equipment, supplies, and machinery. Such agreements shall normally be limited to persons or businesses selling to farmers, ranchers, or producers or harvesters of aquatic products and shall contain credit limits consistent with sound credit standards. When the sales territory of a dealer or cooperative extends outside the territory of the originating association or the Farm Credit district, written consent of each bank and association affected shall be obtained before making such loans. Reasonable compensation may be paid or charged to a dealer or cooperative for services rendered in connection with such programs.

(d) Farm Credit System institutions that are direct lenders may enter into memoranda of understanding among themselves or with other lenders for the simultaneous processing and closing of loans to a mutual borrower. The basic policies and principles of each System lender shall apply.

[47 FR 12146, Mar. 22, 1982. Redesignated at 53 FR 35454, Sept. 14, 1988, and amended at 55 FR 24886, June 19, 1990; 61 FR 67187, Dec. 20, 1996]

§ 614.4530 Special loans, production credit associations and agricultural credit associations.

Under policies approved by the bank board and procedures developed by the bank, production credit associations and agricultural credit associations may make the following special types of loans on commodities covered by price support programs. Notwithstanding the regulations covering other loans made by an association, loans may be made to members on any commodity for which a Commodity Credit Corporation price support program is in effect, at such rate of interest and upon such terms as the bank board may prescribe subject to the following conditions:

(a) The commodity offered as security for the loan shall be eligible for price support under a Commodity Credit Corporation price support program and shall be stored in a bonded public warehouse, holding storage agreement for such commodity approved by Commodity Credit Corporation.

(b) The member shall have complied with all Commodity Credit Corporation eligibility requirements.

(c) The loan shall mature not later than 30 days prior to the expiration of the period during which the Commodity Credit Corporation loan or other price support may be obtained on the commodity and shall be secured by pledge of negotiable warehouse receipts covering the commodity.

(d) The borrower shall appoint the association as his attorney-in-fact to obtain a Commodity Credit Corporation loan (or other such price support as is

available) in the event that the borrower fails to do so prior to maturity or repayment of the loan.

[37 FR 11424, June 7, 1972. Redesignated at 46 FR 51878, Oct. 22, 1981, and amended at 55 FR 24886, June 19, 1990]

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

SOURCE: 63 FR 36547, July 7, 1998, unless otherwise noted.

§ 614.4540 Other financing institution access to Farm Credit Banks and agricultural credit banks for funding, discount, and other similar financial assistance.

(a) *Basic criteria for access.* Any national bank, State bank, trust company, agriculture credit corporation, incorporated livestock loan company, savings association, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products may become an other financing institution (OFI) that funds, discounts, and obtains other similar financial assistance from a Farm Credit Bank or agricultural credit bank in order to extend short- and intermediate-term credit to eligible borrowers for authorized purposes pursuant to sections 1.10(b) and 2.4(a) and (b) of the Act. Each OFI shall be duly organized and qualified to make loans and leases under the laws of each jurisdiction in which it operates.

(b) *Assured access.* Each Farm Credit Bank or agricultural credit bank must fund, discount, or provide other similar financial assistance to any creditworthy OFI that:

(1) Maintains at least 15 percent of its loan volume at a seasonal peak in loans and leases to farmers, ranchers, aquatic producers and harvesters. The Farm Credit Bank or agricultural credit bank shall not include the loan assets of the OFI's parent, affiliates, or subsidiaries when determining compliance with the requirement of this paragraph; and

(2) Executes a general financing agreement with the Farm Credit Bank or agricultural credit bank that establishes a financing or discount relationship for at least 2 years.

(c) *Underwriting standards.* Each Farm Credit Bank and agricultural credit bank shall establish objective policies, procedures, pricing guidelines, and loan underwriting standards for determining the creditworthiness of each OFI applicant. A copy of such policies, procedures, guidelines, and standards shall be made available, upon request to each OFI and OFI applicant.

(d) *Denial of OFI access.* A Farm Credit Bank or an agricultural credit bank may deny the funding request of any creditworthy OFI that meets the conditions in paragraph (b) of this section only when such request would:

(1) Adversely affect a Farm Credit Bank or agricultural credit bank's ability to:

(i) Achieve and maintain established or projected capital levels; or

(ii) Raise funds in the money markets; or

(2) Otherwise expose the Farm Credit Bank or agricultural credit bank to safety and soundness risks.

(e) *Notice to applicants.* Each Farm Credit Bank or agricultural credit bank shall render its decision on an OFI application in as expeditious a manner as is practicable. Upon reaching a decision on an application, the Farm Credit Bank or agricultural credit bank shall provide prompt written notice of its decision to the applicant. When the Farm Credit Bank or agricultural credit bank makes an adverse credit decision on an application, the written notice shall include the specific reason(s) for the decision.

(f) *Reports to the board of directors.* Each Farm Credit Bank and agricultural credit bank shall provide its board of directors with a written annual report regarding the scope of OFI program activities during the preceding fiscal year.

[63 FR 36547, July 7, 1998, as amended at 69 FR 29862, May 26, 2004]

§ 614.4550 Place of discount.

A Farm Credit Bank or agricultural credit bank may provide funding, discounting, or other similar financial assistance to any OFI applicant. However, a Farm Credit Bank or agricultural credit bank cannot fund, discount, or extend other similar financial assistance to an OFI that maintains its headquarters, or has more than 50 percent of its outstanding loan volume to eligible borrowers who conduct agricultural or aquatic operations in the chartered territory of another Farm Credit bank unless it notifies such bank in writing within five (5) business days of receiving the OFI's application for financing. Two or more Farm Credit banks cannot simultaneously fund the same OFI.

[69 FR 29863, May 26, 2004]

§ 614.4560 Requirements for OFI funding relationships.

(a) As a condition for extending funding, discount and other similar financial assistance to an OFI, each Farm Credit Bank or agricultural credit bank shall require every OFI to:

(1) Execute a general financing agreement pursuant to the regulations in subpart C of part 614; and

(2) Purchase non-voting stock in its Farm Credit Bank or agricultural credit bank pursuant to the bank's bylaws.

(b) A Farm Credit Bank or agricultural credit bank shall extend funding, discount and other similar financial assistance to an OFI only for purposes and terms authorized under sections 1.10(b) and 2.4(a) and (b) of the Act.

(c) Rural home loans to borrowers who are not *bona fide* farmers, ranchers, and aquatic producers and harvesters are subject to the restrictions in §613.3030 of this chapter. Loans that an OFI makes to processing and marketing operators who supply less than 20 percent of the throughput shall be included in the calculation that §613.3010(b)(1) of this chapter establishes for Farm Credit Banks and agricultural credit banks.

(d) The borrower rights requirements in part C of title IV of the Act, and the regulations in part 617 of this chapter shall apply to all loans that an OFI funds or discounts through a Farm Credit Bank or agricultural credit bank, unless such loans are subject to the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq*.

(e) As a condition for obtaining funding, discount and other similar financial assistance from a Farm Credit Bank or agricultural credit bank, all State banks, trust companies, or State-chartered savings associations shall execute a written consent that authorizes their State regulators to furnish examination reports to the Farm Credit Administration upon its request. Any OFI that is not a depository institution shall consent in writing to examination by the Farm Credit Administration as a condition precedent for obtaining funding, discount and other similar financial assistance from a Farm Credit Bank or agricultural credit bank, and file such consent with its Farm Credit funding bank.

[63 FR 36547, July 7, 1998, as amended at 69 FR 10906, Mar. 9, 2004; 69 FR 29863, May 26, 2004]

§ 614.4570 Recourse and security.

(a) *Full recourse and guarantee.* All obligations that are funded or discounted through a Farm Credit Bank or agricultural credit bank shall be endorsed with the full recourse or unconditional guarantee of the OFI.

(b) *General collateral.* (1) Each Farm Credit Bank and agricultural credit bank shall take as collateral all notes, drafts, and other obligations that it funds or discounts for each OFI; and

(2) Each Farm Credit Bank and agricultural credit bank shall perfect, in accordance with State law, a senior security interest in any and all obligations and the proceeds thereunder that the OFI pledges as collateral.

(c) *Supplemental collateral.* (1) Each Farm Credit Bank and agricultural credit bank shall develop policies and loan underwriting standards that establish uniform and objective requirements to determine the need and amount of supplemental collateral or other credit enhancements that each OFI shall provide as a condition for obtaining funding, discount and other similar financial assistance from such Farm Credit bank.

(2) The amount, type, and quality of supplemental collateral or other credit

enhancements required for each OFI shall be established in the general financing agreement and shall be proportional to the level of risk that the OFI poses to the Farm Credit Bank or agricultural credit bank.

§ 614.4580 Limitation on the extension of funding, discount and other similar financial assistance to an OFI.

(a) No obligation shall be purchased from or discounted for and no loan shall be made or other similar financial assistance extended by a Farm Credit Bank or agricultural credit bank to an OFI if the amount of such obligation added to the aggregate liabilities of such OFI, whether direct or contingent (other than *bona fide* deposit liabilities), exceeds ten times the paid-in and unimpaired capital and surplus of such OFI or the amount of such liabilities permitted under the laws of the jurisdiction creating such OFI, whichever is less.

(b) It shall be unlawful for any national bank that is indebted to any Farm Credit Bank or agricultural credit bank, on paper discounted or purchased, to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities, direct or contingent, will exceed the limitation described in paragraph (a) of this section.

§ 614.4590 Equitable treatment of OFIs and Farm Credit System associations.

(a) Each Farm Credit Bank and agricultural credit bank shall apply comparable and objective loan underwriting standards and pricing requirements to both OFIs and Farm Credit System direct lender associations.

(b) The total charges that a Farm Credit Bank or agricultural credit bank assesses an OFI through capitalization requirements, interest rates, and fees shall be comparable to the charges that the same Farm Credit Bank or agricultural credit bank imposes on its direct lender associations. Any variation between the overall funding costs that OFIs and direct lender associations are charged by the same funding bank shall result from differences in credit risk and administrative costs to the Farm Credit Bank or agricultural credit bank.

(c) Upon request, each Farm Credit Bank or agricultural credit bank must provide each OFI and OFI applicant, that has or is seeking to establish a funding relationship with the Farm Credit Bank or agricultural credit bank, a copy of its policies, procedures, loan underwriting standards, and pricing guidelines for OFIs. The pricing guidelines must identify the specific components that make up the cost of funds for OFIs, and the amount of these components expressed in basis points.

(d) Upon request of any OFI or OFI applicant, that has or is seeking to establish a funding relationship with the Farm Credit Bank or agricultural credit bank, the bank must explain in writing the reasons for any variation in the overall funding costs it charges to OFIs and affiliated direct lender associations. The written explanation must compare the cost of funds that the Farm Credit Bank or agricultural credit bank charges the OFIs and affiliated direct lender associations. When possible, the written explanation shall compare the costs of funding that the bank charges several OFIs and Farm Credit associations that are similar in size. However, the Farm Credit Bank or agricultural credit bank must not disclose financial or confidential information about any individual Farm Credit association.

[63 FR 36547, July 7, 1998, as amended at 69 FR 29863, May 26, 2004]

§ 614.4595 Public disclosure about OFIs.

A Farm Credit Bank or agricultural credit bank may disclose to members of the public the name, address, telephone number, and Internet Web site address of any affiliated OFI only if such OFI, through a duly authorized officer, consents in writing. Each Farm Credit Bank and agricultural credit bank must adopt policies and procedures for requesting, obtaining, and maintaining the consent of its OFIs and for disclosing this information to the public.

[69 FR 29863, May 26, 2004]

§ 614.4600 Insolvency of an OFI.

If an OFI that is indebted to a Farm Credit Bank or agricultural credit bank becomes insolvent, is in process of liquidation, or fails to service its loans properly, the Farm Credit Bank or agricultural credit bank may take over such loans and other assets that the OFI pledged as collateral. Once the Farm Credit Bank or agricultural credit bank exercises its remedies, it shall have the authority to make additional advances, to grant renewals and extensions, and to take such other actions as may be necessary to collect and service loans to the OFI's borrower. The funding Farm Credit Bank or agricultural credit bank may also liquidate the OFI's loans and other assets in order to achieve repayment of the debt.

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§ 614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives and agricultural credit banks, under policies adopted by their boards of directors, are authorized to finance foreign trade receivables on behalf of eligible cooperatives to include the following:

(1) Advances against collections;

(2) Trade acceptances;

(3) Factoring; and

(4) Open accounts.

(b) To reduce credit, political, and other risks associated with foreign trade receivable financing, the banks for cooperatives and agricultural credit banks shall avail themselves of such guarantee and insurance plans as are available in the United States and other countries, such as the Foreign Credit Insurance Association and the Export-Import Bank of the United States. Exceptions may be made where a prospective borrower has had a long-standing successful business relationship with the eligible cooperative borrower or an eligible cooperative which is not a borrower if the prospective borrower has a high credit rating as determined by the bank.

(c) When financing a draft drawn on a foreign importer, the banks should retain recourse to the exporter unless their credit evaluation of and experience with the importer indicate recourse is not necessary or unless appropriate guarantees or insurance plans are used.

(d) The financing of foreign trade receivables shall be limited by the policies of each bank's board of directors. The policies shall provide a method of determining the maximum amount in dollars, by country, to be financed and establishing a maximum percentage of the amount of a draft drawn on a foreign party against which the bank may advance funds. The banks shall take into consideration the following factors:

(1) The reputation and financial strength of the foreign importer.

(2) The reputation and payment record of the class of importers in the same country as the subject importer in regard to prompt payment of drafts drawn upon them.

(3) The quality of the supporting documents offered with the draft.

(4) The degree of ease with which necessary foreign exchange conversion can be made, or the extent to which foreign currency exposure may be hedged by forward or future contracts.

(5) The reputation and financial strength of the exporter.

(e) The banks may establish foreign trade receivable financing programs by which eligible parties pledge collections to the bank, and then may borrow from the bank up to a stated maximum percentage of the total amount of receivables pledged at any one time.

(f) When financing foreign trade receivables, the banks shall take such precautions and obtain such credit information as necessary to ascertain that all parties to the transaction(s) being financed are reputable and capable of performing their responsibilities under the contract of sale.

(g) When financing foreign trade receivables, the banks shall determine that all shipments are covered by maritime insurance while on the high seas.

(h) Countries where credit is to be extended will be analyzed periodically and systematically on a centralized basis. The resulting country studies will be disseminated to all banks for cooperatives and agricultural credit

banks to be used as inputs in credit grading decisions.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990; 62 FR 4445, Jan. 30, 1997]

§ 614.4710 [Reserved]

§ 614.4720 Letters of credit.

Banks for cooperatives and agricultural credit banks, under policies adopted by their boards of directors, may issue, advise, or confirm import or export letters of credit in accordance with the Uniform Commercial Code, or the Uniform Customs and Practice for Documentary Credits, to or on behalf of its customers. In addition, as a matter of sound banking practice, letters of credit shall be issued in conformity with the list which follows.

(a) Each letter of credit shall be in writing and shall conspicuously state that it is a letter of credit, or be conspicuously entitled as such.

(b) The letter of credit shall contain a specified expiration date or be for a definite term.

(c) The letter of credit shall contain a sum certain.

(d) The bank's obligation to pay should arise only upon fulfilling the terms and conditions as specified in the letter of credit. The bank must not be called upon to determine questions of fact or law at issue between the account party and the beneficiary.

(e) The bank's customer should have an unqualified obligation to reimburse the bank for payments made under the letter of credit.

(f) All letters of credit shall be irrevocable.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24887, June 19, 1990; 62 FR 4445, Jan. 30, 1997; 64 FR 43049, Aug. 9, 1999]

§ 614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives or an agricultural credit bank, under a policy approved by the bank's board of directors, may lend its credit, be itself a surety to indemnify another, or otherwise become a guarantor if an eligible cooperative substantially benefits from the performance of the transaction involved. A bank may guarantee the debt of eligible cooperatives and foreign parties or otherwise agree to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies a maximum monetary liability. Guarantees may be secured or unsecured, and can include, but are not limited to, such events as nonpayment of taxes, rentals, customs duties, costs of transport, and loss of or nonconformance of shipping documents. The bank's customer shall have an unqualified obligation to reimburse the bank for payments made under a guarantee or surety.

[55 FR 24887, June 19, 1990, as amended at 62 FR 4445, Jan. 30, 1997]

§ 614.4810 Standby letters of credit.

(a) The banks for cooperatives and agricultural credit banks are authorized to issue on behalf of parties eligible for financing under regulations § 614.4010(d) or § 614.4020 standby letters of credit that represent an obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by, advanced to, or for the account of the account party, or

(2) To make payment on account of any indebtedness undertaken by the account party, or

(3) To make payment on account of any default by the account party in the performance of an obligation.

(b) As a matter of sound banking practice, banks for cooperatives and agricultural credit banks shall evaluate applications for standby letters of credit on the basis of the loan underwriting standards adopted pursuant to § 614.4150 of the regulations.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24887, June 19, 1990; 62 FR 4445, Jan. 30, 1997; 62 FR 51015, Sept. 30, 1997]

§ 614.4900 Foreign exchange.

(a) Before a bank for cooperatives or an agricultural credit bank may engage in any financial transaction which transports monetary instruments from any place within the United States to or through any place outside the United States or to any place within the United States, the bank must have policies adopted by the bank's board of directors governing

such transactions and must have established bank procedures to safeguard the interests of the stockholders of the bank in regard to such transactions.

(b) Under policies adopted by the bank's board of directors, a bank for cooperatives or an agricultural credit bank may engage in currency exchange activities necessary to service individual transactions that may be financed under the regulations authorizing export, import, and other internationally related credit and financial services. These currency exchange activities shall not include any loans or commitments intended to finance speculative futures transactions by eligible borrowers in foreign currencies. The bank may engage, on behalf of the eligible borrowers or on its own behalf, in bona fide hedging transactions and positions, where such transactions or positions normally reduce risks in the conduct and management of international financial activities. The bank's policies should include established guidelines for:

(1) Net overnight positions, by currency.

(2) Maturity distribution, by currency, of foreign currency assets, liabilities, and foreign exchange contracts.

(3) Outstanding contracts with individual customers and banks.

(4) Credit approval procedures safeguarding against delivery or settlement risk.

(5) Total value of outstanding contracts—spot and forward.

(c) A bank for cooperatives or an agricultural credit bank is responsible for its compliance with the laws of the United States in regard to reporting requirements of the Department of the Treasury pertaining to currency exchange activities and international transfers of monetary instruments.

(d) A bank for cooperatives or an agricultural credit bank engaged in foreign exchange trading shall have written policies describing the scope of trading activity authorized, delegation of authority, types of services offered, trading limits, reporting requirements, and internal accounting controls.

(e) The bank's trading guideline policies should provide for reporting procedures adequate to inform management properly of trading activities and to facilitate detection of lack of compliance with policy directives.

(f) The bank's policies shall establish foreign exchange delivery limits for eligible customers with relationship to the customer's financial capability to bear the financial risks assumed. The bank will be expected to maintain documentary evidence that a customer's delivery exposure is reasonable, and that responsible bank officers routinely review outstanding delivery exposure of individual customers.

(g) The bank's personnel policies shall include written standards of conduct for those involved with foreign exchange activities, including the following which should be prohibited:

(1) Trading with entities affiliated with the bank or with members of the board of directors.

(2) Foreign exchange and deposit transactions with other bank employees.

(3) Personal business relationships with foreign exchange and money brokers with whom the bank deals.

(h) The bank's policies should provide detailed instructions regarding the need for bank officers to disclose the limits of responsibility and liability of the bank when it holds positions or executes contracts for the account of eligible parties. The bank's policies regarding the respective procedures should provide reasonable assurance that reports on trading activities are current and complete, and that the opportunity for concealment of unauthorized transactions is kept at the absolute minimum.

(i) The banks for cooperatives and agricultural credit banks shall use the Funding Corporation for purposes of trading foreign exchange. All foreign exchange transactions shall be made by the Funding Corporation on behalf of the banks consistent with instructions received from the respective banks.

(j) Guidelines (b) through (i) of this section will not apply if a bank purchases or sells foreign exchange through a commercial bank and has no foreign exchange risk exposure.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24887, June 19, 1990; 62 FR 4445, Jan. 30, 1997]

Subpart R—Secondary Market Authorities

§614.4910 Basic authorities.

(a) Any bank or association of the Farm Credit System, except a bank for cooperatives, with direct lending authority may originate agricultural real estate loans for sale to one or more certified agricultural mortgage marketing facilities under title VIII of the Act.

(b) Any bank or association of the Farm Credit System, except a bank for cooperatives, may operate as an agricultural mortgage marketing facility under title VIII of the Act, either acting alone or jointly with other banks and/or associations, if so certified by the Federal Agricultural Mortgage Corporation.

[54 FR 1155, Jan. 12, 1989]

Subpart S—Flood Insurance Requirements

SOURCE: 80 FR 43254, July 21, 2015, unless otherwise noted.

§614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This subpart, except for §§614.4940 and 614.4950, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Administrator of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

§614.4925 Definitions.

For purposes of this subpart:

1968 Act means the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

Administrator of FEMA means the Administrator of the Federal Emergency Management Agency.

Building means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

Community means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

Designated loan means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act.

Mobile home means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this subpart, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

Mutual aid society means an organization—

(1) Whose members share a common religious, charitable, educational, or fraternal bond;

(2) That covers losses caused by damage to members' property pursuant to an agreement, including damage caused by flooding, in accordance with this common bond; and

(3) That has a demonstrated history of fulfilling the terms of agreements to cover losses to members' property caused by flooding.

NFIP means the National Flood Insurance Program authorized under the 1968 Act.

Private flood insurance means an insurance policy that:

(1) Is issued by an insurance company that is:

(i) Licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or

(ii) Recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction in which the property to be insured is located in the case of a policy of difference in conditions, multiple

peril, all risk, or other blanket coverage insuring nonresidential commercial property;

(2) Provides flood insurance coverage that is at least as broad as the coverage provided under an SFIP for the same type of property, including when considering deductibles, exclusions, and conditions offered by the insurer. To be at least as broad as the coverage provided under an SFIP, the policy must, at a minimum:

(i) Define the term ''flood'' to include the events defined as a ''flood'' in an SFIP;

(ii) Contain the coverage specified in an SFIP, including that relating to building property coverage; personal property coverage, if purchased by the insured mortgagor(s); other coverages; and increased cost of compliance coverage;

(iii) Contain deductibles no higher than the specified maximum, and include similar non-applicability provisions, as under an SFIP, for any total policy coverage amount up to the maximum available under the NFIP at the time the policy is provided to the lender;

(iv) Provide coverage for direct physical loss caused by a flood and may only exclude other causes of loss that are excluded in an SFIP. Any exclusions other than those in an SFIP may pertain only to coverage that is in addition to the amount and type of coverage that could be provided by an SFIP or have the effect of providing broader coverage to the policyholder; and

(v) Not contain conditions that narrow the coverage provided in an SFIP;

(3) Includes all of the following:

(i) A requirement for the insurer to give written notice 45 days before cancellation or non-renewal of flood insurance coverage to:

(A) The insured; and

(B) The System institution that made the designated loan secured by the property covered by the flood insurance, or the servicer acting on its behalf;

(ii) Information about the availability of flood insurance coverage under the NFIP;

(iii) A mortgage interest clause similar to the clause contained in an SFIP; and

(iv) A provision requiring an insured to file suit not later than one year after the date of a written denial of all or part of a claim under the policy; and

(4) Contains cancellation provisions that are as restrictive as the provisions contained in an SFIP.

Residential improved real estate means real estate upon which a home or other residential building is located or to be located.

Servicer means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

SFIP means, for purposes of § 614.4925, a standard flood insurance policy issued under the NFIP in effect as of the date private flood insurance is provided to a System institution.

Special flood hazard area means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Administrator of FEMA.

Table funding means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

[80 FR 43254, July 21, 2015, as amended at 84 FR 4973, Feb. 20, 2019]

§ 614.4930 Requirement to purchase flood insurance where available.

(a) *In general.* A System institution shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum

limit of coverage available for the particular type of property under the 1968 Act. Flood insurance coverage under the 1968 Act is limited to the building or mobile home and any personal property that secures a loan and not the land itself.

(b) *Table funded loans.* A System institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this subpart.

(c) *Private flood insurance*—(1) *Mandatory acceptance.* A System institution must accept private flood insurance, as defined in §614.4925, in satisfaction of the flood insurance purchase requirement in paragraph (a) of this section if the policy meets the requirements for coverage in paragraph (a) of this section.

(2) *Compliance aid for mandatory acceptance.* A System institution may determine that a policy meets the definition of private flood insurance in §614.4925, without further review of the policy, if the following statement is included within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. 4012a(b)(7) and the corresponding regulation.''

(3) *Discretionary acceptance.* A System institution may accept a flood insurance policy issued by a private insurer that is not issued under the NFIP and that does not meet the definition of private flood insurance in §614.4925 in satisfaction of the flood insurance purchase requirement of this section if the policy:

(i) Provides coverage in the amount required by paragraph (a) of this section;

(ii) Is issued by an insurer that is licensed, admitted, or otherwise approved to engage in the business of insurance by the insurance regulator of the State or jurisdiction in which the property to be insured is located; or in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is issued by a surplus lines insurer recognized, or not disapproved, by the insurance regulator of the State or jurisdiction where the property to be insured is located;

(iii) Covers both the mortgagor(s) and the mortgagee(s) as loss payees, except in the case of a policy that is provided by a condominium association, cooperative, homeowners association, or other applicable group and for which the premium is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense; and

(iv) Provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the System institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

(4) *Mutual aid societies.* Notwithstanding the requirements of paragraph (c)(3) of this section, a System institution may accept a plan issued by a mutual aid society, as defined in §614.4925, in satisfaction of the flood insurance purchase requirement of this section if:

(i) The FCA has determined that such plans qualify as flood insurance for purposes of the Act;

(ii) The plan provides coverage in the amount required by paragraph (a) of this section;

(iii) The plan covers both the mortgagor(s) and the mortgagee(s) as loss payees; and

(iv) The plan provides sufficient protection of the designated loan, consistent with general safety and soundness principles, and the System institution documents its conclusion regarding sufficiency of the protection of the loan in writing.

[80 FR 43254, July 21, 2015, as amended at 84 FR 4973, Feb. 20, 2019]

§614.4932 Exemptions.

The flood insurance requirement prescribed by §614.4930 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Administrator of FEMA, who publishes and periodically revises the list of States falling within this exemption;

(b) Property securing any loan with an original principal balance of $5,000

or less and a repayment term of one year or less; or

(c) Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence. For purposes of this paragraph (c):

(1) ''A structure that is a part of a residential property'' is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes;

(2) A structure is ''detached'' from the primary residential structure if it is not joined by any structural connection to that structure; and

(3) ''Serve as a residence'' shall be based upon the good faith determination of the System institution that the structure is intended for use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities.

§ 614.4935 Escrow requirement.

(a) *In general*—(1) *Applicability*. Except as provided in paragraph (a)(2) or paragraph (c) of this section, a System institution, or a servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930 for any designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, payable with the same frequency as payments on the designated loan are required to be made for the duration of the loan.

(2) *Exceptions*. Paragraph (a)(1) of this section does not apply if:

(i) The loan is an extension of credit primarily for business, commercial, or agricultural purposes;

(ii) The loan is in a subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which the borrower has obtained flood insurance coverage that meets the requirements of § 614.4930;

(iii) Flood insurance coverage for the residential improved real estate or mobile home is provided by a policy that:

(A) Meets the requirements of § 614.4930;

(B) Is provided by a condominium association, cooperative, homeowners association, or other applicable group; and

(C) The premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;

(iv) The loan is a home equity line of credit;

(v) The loan is a nonperforming loan, which is a loan that is 90 or more days past due and remains nonperforming until it is permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full; or

(vi) The loan has a term of no longer than 12 months.

(3) *Duration of exception*. If a System institution, or a servicer acting its behalf, determines at any time during the term of a designated loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, that an exception under paragraph (a)(2) of this section does not apply, then the System institution, or the servicer acting on its behalf, shall require the escrow of all premiums and fees for any flood insurance required under § 614.4930 as soon as reasonably practicable and, if applicable, shall provide any disclosure required under section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA).

(4) *Escrow account*. The System institution, or a servicer acting on its behalf, shall deposit the flood insurance premiums and fees on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of RESPA, which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Administrator of FEMA or other provider of flood insurance that premiums are due, the System institution, or a servicer acting on its behalf,

shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(b) *Notice.* For any loan for which a System institution is required to escrow under paragraph (a)(1) or paragraph (c)(2) of this section or may be required to escrow under paragraph (a)(3) of this section during the term of the loan, the System institution, or a servicer acting on its behalf, shall mail or deliver a written notice with the notice provided under §614.4955 informing the borrower that the System institution is required to escrow all premiums and fees for required flood insurance, using language that is substantially similar to model clauses on the escrow requirement in appendix A to this subpart.

(c) *Small lender exception*—(1) *Qualification.* Except as may be required under applicable State law, paragraphs (a), (b), and (d) of this section do not apply to a System institution:

(i) That has total assets of less than $1 billion as of December 31 of either of the two prior calendar years; and

(ii) On or before July 6, 2012:

(A) Was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of any loan secured by residential improved real estate or a mobile home; and

(B) Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.

(2) *Change in status.* If a System institution previously qualified for the exception in paragraph (c)(1) of this section, but no longer qualifies for the exception because it had assets of $1 billion or more for two consecutive calendar year ends, the System institution must escrow premiums and fees for flood insurance pursuant to paragraph (a) of this section for any designated loan made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.

(d) *Option to escrow*—(1) *In general.* A System institution, or a servicer acting on its behalf, shall offer and make available to the borrower the option to escrow all premiums and fees for any flood insurance required under §614.4930 for any loan secured by residential improved real estate or a mobile home that is outstanding on January 1, 2016, or July 1 of the first calendar year in which the System institution has had a change in status pursuant to paragraph (c)(2) of this section, unless:

(i) The loan or the System institution qualifies for an exception from the escrow requirement under paragraph (a)(2) or (c) of this section, respectively;

(ii) The borrower is already escrowing all premiums and fees for flood insurance for the loan; or

(iii) The System institution is required to escrow flood insurance premiums and fees pursuant to paragraph (a) of this section.

(2) *Notice.* For any loan subject to paragraph (d) of this section, the System institution, or a servicer acting on its behalf, shall mail or deliver to the borrower no later than June 30, 2016, or September 30 of the first calendar year in which the System institution has had a change in status pursuant to paragraph (c)(2) of this section, a notice in writing, or if the borrower agrees, electronically, informing the borrower of the option to escrow all premiums and fees for any required flood insurance and the method(s) by which the borrower may request the escrow, using language similar to the model clause in appendix B to this subpart.

(3) *Timing.* The System institution, or the servicer acting on its behalf, must begin escrowing premiums and fees for flood insurance as soon as reasonably practicable after the System institution, or servicer, receives the borrower's request to escrow.

[80 FR 43256, July 21, 2015]

§614.4940 Required use of standard flood hazard determination form.

(a) *Use of form.* A System institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile

home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner. A System institution may obtain the standard flood hazard determination form from FEMA's Web site at *www.fema.gov*.

(b) *Retention of form.* A System institution shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the System institution owns the loan.

§ 614.4945 Force placement of flood insurance.

(a) *Notice and purchase of coverage.* If a System institution, or a servicer acting on behalf of the System institution, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under § 614.4930, then the System institution, or a servicer acting on its behalf, shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the System institution, or its servicer, shall purchase insurance on the borrower's behalf. The System institution, or its servicer, may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(b) *Termination of force-placed insurance*—(1) *Termination and refund.* Within 30 days of receipt by a System institution, or by a servicer acting on its behalf, of a confirmation of a borrower's existing flood insurance coverage, the System institution, or its servicer, shall:

(i) Notify the insurance provider to terminate any insurance purchased by the System institution, or its servicer, under paragraph (a) of this section; and

(ii) Refund to the borrower all premiums paid by the borrower for any insurance purchased by the System institution, or by its servicer, under paragraph (a) of this section during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the System institution, or its servicer, were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the System institution, or its servicer, during such period.

(2) *Sufficiency of demonstration.* For purposes of confirming a borrower's existing flood insurance coverage under paragraph (b) of this section, a System institution, or a servicer acting on its behalf, shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

§ 614.4950 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any System institution, or a servicer acting on behalf of the System institution, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Administrator of FEMA's revision or updating of flood plain areas or flood-risk zones;

(3) Reflects the Administrator of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Administrator of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the lender, or its servicer, on behalf of the borrower under § 614.4945.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the System institution shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Administrator of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available from private insurance companies that issue standard flood insurance policies on behalf of the NFIP or directly from the NFIP;

(4) A statement that flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP also may be available from a private insurance company that issues policies on behalf of the company;

(5) A statement that the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and that the borrower should direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent; and

(6) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(c) *Timing of notice.* The System institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the System institution provides notice to the borrower and in any event no later than the time the System institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The System institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time it owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a System institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The System institution shall retain a record of the written assurance from the seller or lessor for the period of time it owns the loan.

(f) *Use of sample form of notice.* A System institution will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this subpart

within a reasonable time before the completion of the transaction. The notice presented in appendix A to this subpart satisfies the borrower notice requirements of the 1968 Act.

[80 FR 43254, July 21, 2015, as amended at 80 FR 43257, July 21, 2015]

§ 614.4960 Notice of servicer's identity.

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, it shall notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The Administrator of FEMA has designated the insurance provider to receive the System institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

(b) *Transfer of servicing rights.* The System institution shall notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

APPENDIX A TO SUBPART S OF PART 614—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Administrator of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Administrator of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the building or mobile home and any personal property that secures your loan and not the land itself.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

• Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose not to maintain flood insurance on a structure and it floods, you are responsible for all flood losses relating to that structure.

Availability of Private Flood Insurance Coverage

Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance that provides the same level of coverage as a standard flood insurance policy under the NFIP may be available from private insurers that do not participate in the NFIP. You should compare the flood insurance coverage, deductibles,

exclusions, conditions, and premiums associated with flood insurance policies issued on behalf of the NFIP and policies issued on behalf of private insurance companies and contact an insurance agent as to the availability, cost, and comparisons of flood insurance coverage.

[Escrow Requirement for Residential Loans

Federal law may require a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. If your lender notifies you that an escrow account is required for your loan, then you must pay your flood insurance premiums and fees to the lender or its servicer with the same frequency as you make loan payments for the duration of your loan. These premiums and fees will be deposited in the escrow account, which will be used to pay the flood insurance provider.]

____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the nonparticipating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally declared flood disaster.

[80 FR 43258, July 21, 2015]

APPENDIX B TO SUBPART S OF PART 614—SAMPLE CLAUSE FOR OPTION TO ESCROW FOR OUTSTANDING LOANS

Escrow Option Clause

You have the option to escrow all premiums and fees for the payment on your flood insurance policy that covers any residential building or mobile home that is located in an area with special flood hazards 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

Subpart A—Funding

Sec.

Subpart B—Collateral

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

Subpart D—Other Funding

Subpart E—Investment Management

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