

the criteria set forth in § 614.4550 and complies with the various other requirements of this subpart.

(b) An OFI meeting the basic eligibility criteria in § 614.4550 of this subpart shall have its request for access evaluated on the basis of its ability to make and service a sound loan portfolio and its managerial and financial strength. The presence of two or more OFI's serving the same territory or the failure of an OFI to enter into loan participations with production credit associations or agricultural credit associations shall not be considered in evaluating the request for access. Financial assistance may be provided through a direct loan to the OFI, or by purchasing or discounting individual loans made by the OFI.

(c) A bank shall determine, in considering a request to establish an access relationship, whether the OFI should be considered by itself, or together with its affiliates or subsidiaries as a combined entity, for the purpose of determining eligibility in applying the criteria set forth in § 614.4550 of this subpart. A determination to consider an OFI together with its affiliates as a combined entity shall require the consistent application of each of the eligibility criteria to the combined entity on a consolidated basis. In making its determination, the bank shall give due regard to the total relationship between the various parties, including but not necessarily limited to the following factors:

- (1) Ownership of voting stock;
- (2) Common management and employees;
- (3) Common directors;
- (4) Contractual and correspondent relationships;
- (5) Prior business dealings; and
- (6) Liability interrelationships, including but not limited to fund flows.

(d) Where a bank makes a determination to consider an OFI together with its affiliates as a combined entity, the OFI must demonstrate that the larger organization of which it is considered a part will continue to use the same proportion of its resources for agricultural or aquatic lending. The OFI must also demonstrate that all resources available to the consolidated entity are

being used to alleviate the shortage of funds for agriculture.

(e) In dealing with an OFI affiliated with a cooperative, the bank shall consider the possible effects of such relationship on the operations and credit policies of the cooperative. Such OFI which is an otherwise eligible entity may discount or borrow on the security of notes of farmers, ranchers, or producers or harvesters of aquatic products (as distinguished from notes of cooperatives), evidencing loans to finance the cost of supplies, equipment, or services obtained from such affiliated cooperative, if the bank board finds that an additional source of credit is needed to facilitate financing of such transactions and the primary benefits of such credit will inure to the borrowing farmers, ranchers, or producers or harvesters of aquatic products.

[46 FR 51886, Oct. 22, 1981; 46 FR 54726, Nov. 4, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4550 Basic eligibility criteria.

(a) An OFI shall be afforded access on a reasonable basis to a bank as a source of funds if it meets all of the eligibility criteria set forth below:

(1) The OFI is duly organized and qualified to make loans under the laws of each jurisdiction in which it operates. The OFI shall be a person primarily engaged in the business of extending short- and intermediate-term credit to farmers, ranchers, and/or producers or harvesters of aquatic products. A person engaged in other business activities shall not be eligible to obtain credit from a bank merely because it has the power to make loans to farmers, ranchers, and/or producers or harvesters of aquatic products. The fact that an OFI has powers not related to such credit activities or receives income from other sources shall not in and of itself render it ineligible. A person whose primary function is to finance the sale of products by its affiliates shall not be eligible for access.

(2) The OFI is significantly involved in lending for agricultural or aquatic purposes. The OFI has at least 15 percent of its loan volume at the seasonal peak in agricultural and/or aquatic loans. The bank shall consider requests with a lesser percent if the OFI demonstrates that it is making a special

and sustained effort to serve agricultural or aquatic producers and the 15 percent will be attained in a reasonably short period. Only obligations under section 2.15(a) (1), (2), and (3) of the Farm Credit Act of 1971, as amended, as well as eligible agricultural or aquatic real estate loans to eligible borrowers and leasing obligations to eligible borrowers originated through the OFI's own leasing program, shall be considered in determining that this 15-percent requirement has been met.

(3) Where the OFI seeking access is a depository institution, or where the OFI is affiliated with one or more depository institutions and considered a combined entity in accordance with §614.4545(c) of this subpart, the OFI must demonstrate a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers. The OFI's gross loan-to-deposit ratio shall be not less than 60 percent at the seasonal peak for the last 3 consecutive years. Where failure to meet this criterion in one of the last 3 consecutive years is the result of a general decrease in borrowings caused by an economic decline, the bank may make an exception in applying this criterion to a request for access where the OFI has otherwise maintained ratios equivalent to depository institutions of comparable size in the district. For purposes of this paragraph, gross loans shall include all direct credit extended by the OFI in its trade area. Such items as loans purchased from or participated in with other OFIs shall be excluded.

(4) The OFI has limited access to national or regional money markets as an alternate source of funds and is fully utilizing locally generated funds to finance local needs. Evidence of money market access shall be determined by the extent to which the OFI, or persons of similar size and circumstances, have the ability to utilize, on a regular basis, bankers acceptances, commercial paper, or negotiable certificates of deposit, or other similar liability instruments as a source of funds.

(5) The OFI would continue to use at least the same proportion of its resources for agricultural or aquatic lending.

(b) An OFI eligible under previous regulations which cannot meet the basic eligibility requirements of these regulations and is discounting with a bank on the effective date of these revisions shall not become ineligible provided it does not make material changes in operations or ownership.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4555 Review of denial of access based on eligibility.

A bank which proposes to reject a request by an OFI for access to the bank as a source of funds on the basis of eligibility as set forth in §614.4550 of this subpart shall promptly notify the Farm Credit Administration of such decision and the reasons therefor. The Farm Credit Administration shall review each such negative decision on a case-by-case basis, taking into consideration all relevant factors, and advise the bank of its final determination. Thereafter, the bank shall promptly notify the OFI of the determination as to the request for access and, if rejected, the reasons therefor.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4560 Establishing and maintaining access.

(a) An OFI seeking access to a bank as a supplemental source of funds shall demonstrate that it is able to establish and maintain a sound lending program. Each bank shall develop standards to evaluate an OFI relative to:

(1) A capital structure adequate to support an economically feasible lending operation;

(2) The amount of collateral required to be deposited with or invested in the bank to support the extension of credit to the OFI; and

(3) The ability of the OFI to extend and administer the anticipated loan portfolio on a sound basis.

(b) The standards set forth in paragraph (a) shall be subject to the following limitations:

(1) The amount required to capitalize an OFI shall be determined by an analysis of the economic feasibility of the proposal presented in the request, the credit risk involved, and the servicing