

dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions);

(6) Payments to, or obligations to pay, the Farm Credit System Financial Assistance Corporation to the extent permitted by section 6.26(c)(5)(G) of the Act and § 615.5210(d); and

(7) Financial assistance provided by the Farm Credit System Insurance Corporation that the Farm Credit Administration determines appropriate to be considered permanent capital.

(k) *Risk-adjusted asset base* means the total dollar amount of the institution's assets adjusted in accordance with § 615.5210 (d) and (e) and weighted on the basis of risk in accordance with § 615.5210(f).

(l) *Standby letter of credit* means any letter of credit or similar arrangement that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or 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, in the event the account party fails to fulfill its obligation to the beneficiary.

(m) *Stock* means stock and participation certificates.

(n) *Total capital* means assets minus liabilities, valued in accordance with generally accepted accounting principles (GAAP), except that liabilities shall not include obligations to retire stock protected under section 4.9A of the Act.

[53 FR 39247, Oct. 6, 1988, as amended at 56 FR 2675, Jan. 24, 1991; 59 FR 37404, July 22, 1994; 62 FR 4446, Jan. 30, 1997]

§ 615.5205 Minimum permanent capital standards.

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

[62 FR 4446, Jan. 30, 1997]

§ 615.5210 Computation of the permanent capital ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles except that the obligations of the Farm Credit System Financial Assistance Corporation shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) Through December 31, 1989, the institution's assets and permanent capital may be computed using the average of the most recent 3 months' balances. Thereafter, the institution's asset base and permanent capital shall be computed using average daily balances for the most recent 3 months.

(c) The institution's permanent capital ratio shall be calculated by dividing the institution's permanent capital, adjusted in accordance with paragraph (e) of this section (the numerator), by the risk-adjusted asset base (the denominator), to derive a ratio expressed as a percentage.

(d) Until September 27, 2002, payments of assessments to the Farm Credit System Financial Assistance Corporation, and any part of the obligation to pay future assessments to the Farm Credit System Financial Assistance Corporation that is recognized as an expense on the books of a bank or association, shall be included in the capital of such bank or association for the purpose of determining its compliance with regulatory capital requirements, to the extent allowed by section 6.26(c)(5)(G) of the Act. If the bank directly or indirectly passes on all or part of the payments to its affiliated associations pursuant to section 6.26(c)(5)(D) of the Act, such amounts shall be included in the capital of the associations and shall not be included in the capital of the bank. After September 27, 2002, no payments of assessments or obligations to pay future assessments may be included in the capital of the bank or association.

(e) For the sole purpose of computing the institution's permanent capital ratio, the following adjustments shall be made prior to assigning assets to

risk-weight categories and computing the ratio:

(1) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings shall be eliminated to the extent of the offset. If the investments are equal in amount, each institution shall deduct from its assets and its total capital an amount equal to the investment. If the investments are not equal in amount, each institution shall deduct from its total capital and its assets an amount equal to the smaller investment.

(2) Where a Farm Credit Bank or an agricultural credit bank is owned by one or more Farm Credit System institutions, the double counting of capital shall be eliminated in the following manner:

(i) All equities of a Farm Credit Bank or agricultural credit bank that have been purchased by other Farm Credit institutions shall be considered to be permanent capital of the Farm Credit Bank or agricultural credit bank.

(ii) Each Farm Credit Bank or agricultural credit bank and each of its affiliated associations may enter into an agreement that specifies, for the purpose of computing permanent capital only, a dollar amount and/or percentage allotment of the association's allocated investment between the bank and the association. The following conditions shall apply:

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

(B) The agreement shall be entered into on or before its effective date.

(C) The agreement may be amended according to its terms, but no more frequently than annually except in the event that a party to the agreement is merged or reorganized, or in the event of a reallocation pursuant to paragraph (e)(2)(ii)(G) of this section. The agreement shall include a provision addressing how the agreement will be amended if a reallocation is required by paragraph (e)(2)(ii)(G) of this section.

(D) On or before the effective date of the agreement, a certified copy of the agreement, and any amendments thereto, shall be sent to the field office of the Farm Credit Administration responsible for examining the institution. A copy shall also be sent within

30 calendar days of adoption to the bank's other affiliated associations.

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

(F) In the absence of an agreement between a Farm Credit Bank or an agricultural credit bank and one or more associations, or in the event that an agreement expires and at least one party has timely objected to the continuation of the terms of its agreement, the following formula shall be applied with respect to the allocated investments held by those associations with which there is no agreement (non-agreeing associations), and shall not be applied to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(1) The allotment formula shall be calculated annually.

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

(3) If the permanent capital ratio for the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(2) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with paragraph (e)(2)(ii)(F)(2) of this section is 7 percent or above shall be allotted

50 percent to the bank and 50 percent to the association.

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

(5) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(2) of this section is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital ratio of 7 percent shall be determined, and an amount of the allocated investment of each nonagreeing association shall be allotted to the Farm Credit Bank or agricultural credit bank as follows:

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

(ii) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the re-

maining allocated investments of the nonagreeing associations shall be allotted to the bank.

(G) If a payment or part of a payment to the Farm Credit System Financial Assistance Corporation pursuant to section 6.9(e)(3)(D)(ii) of the Act would cause a bank to fall below its minimum permanent capital requirement, the bank and one or more associations shall amend their allocation agreements to increase the allotment of the allocated investment to the bank sufficiently to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the associations would continue to meet their minimum permanent capital requirement. In the case of a nonagreeing association, the Farm Credit Administration may require a revision of the allotment sufficient to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the association would continue to meet its minimum permanent capital requirement. The Farm Credit Administration Board may, at the request of one or more of the institutions affected, waive the requirements of this paragraph (e)(2)(ii)(G) if the Board deems it is in the overall best interest of the institutions affected.

(3) A Farm Credit Bank or agricultural credit bank and a recipient, other than an association, of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of the bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(4) A bank for cooperatives and a recipient of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between

Farm Credit Administration

§ 615.5210

the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of a bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(5) Where a bank or association invests in an association to capitalize a loan participation interest, the investing institution shall deduct from its total capital an amount equal to its investment in the participating institution.

(6) The double counting of capital between the Leasing Corporation and its owner institutions shall be eliminated by deducting an amount equal to their investment in the Leasing Corporation from their total capital.

(7) Each institution shall deduct from its total capital an amount equal to all goodwill, whenever required.

(8) To the extent an institution has deducted its investment in another Farm Credit institution from its total capital, the investment may be eliminated from its asset base.

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

(10) The permanent capital of an institution shall exclude the net impact of unrealized holding gains or losses on available-for-sale securities.

(f) The risk-adjusted asset base (denominator) shall be determined in the following manner:

(1) Each asset on the institution's balance sheet and each off-balance-sheet item, adjusted by the appropriate credit conversion factor in paragraph (f)(3) of this section, shall be assigned to one of five risk categories in accordance with this section. The aggregate dollar value of the assets in each category shall be multiplied by the percentage weight assigned to that category. The sum of the weighted dollar

values from each of the five risk categories shall comprise the denominator for computation of the permanent capital ratio.

(2) Balance sheet assets shall be assigned to the percentage risk categories as follows:

(i) *Category 1: 0 Percent*

(A) Cash on hand and demand balances held in domestic and foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill.

(ii) *Category 2: 10 Percent*

(A) All securities issued by the United States Government and Government agencies.

(B) Cash items in the process of collection.

(C) Portions of loans and other assets collateralized by securities of the United States Government or Government agencies.

(D) Securities and other claims guaranteed by the United States Government or Government agencies or portions of such claims (but only to the extent guaranteed).

(iii) *Category 3: 20 Percent*

(A) Loans and other assets collateralized by United States Government-sponsored agency securities.

(B) Claims on foreign banks with an original maturity of 1 year or less.

(C) Claims on domestic banks (exclusive of demand balances).

(D) Investments in State and local government obligations backed by the "full faith and credit of State or local government." Other claims (including loans) and portions of claims guaranteed by the full faith and credit of a State government (but only to the extent guaranteed).

(E) Claims on official multinational lending institutions or regional development institutions in which the United States Government is a shareholder or contributor.

(F) Loans and other obligations of and investments in Farm Credit institutions.

(G) Local currency claims on foreign central governments to the extent that the Farm Credit institution has local liabilities in that country.

(iv) *Category 4: 50 Percent*

(A) All other investment securities with maturities under 1 year.

§ 615.5210

12 CFR Ch. VI (1–1–98 Edition)

(B) Rural housing loans secured by first lien mortgages or deeds of trust.

(v) *Category 5: 100 percent*

(A) All other claims on private obligors.

(B) Claims on foreign banks with original maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in category 3 (G).

(3) *Off-Balance-Sheet Items.*

(i) The dollar amount of off-balance-sheet items that shall be assigned to a risk-weight category for inclusion in the denominator shall be determined by multiplying the face amount of the item by the appropriate credit conversion factor set forth in paragraph (f)(3)(ii) of this section. The resulting amount shall be then assigned to the appropriate risk-weight category described in paragraph (f)(2) of this section on the basis of the type of obligor.

(ii) Credit conversion factors shall be applied to off-balance-sheet items as follows:

(A) *0 Percent*

(1) Unused commitments with an original maturity of 1 year or less;

(2) Unused commitments with an original maturity of greater than 1 year if;

(i) They are unconditionally cancellable by the institution; and

(ii) The institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition before each drawing under the lending arrangement.

(B) *20 Percent*

(1) Short-term, self-liquidating, trade-related contingencies, including but not limited to, commercial letters of credit.

(C) *50 Percent*

(1) Transaction-related contingencies (e.g. bid bonds, performance bonds, warranties, and performance-based standby letters of credit related to a particular transaction).

(2) Unused loan commitments with an original maturity exceeding 1 year,

including underwriting commitments and commercial credit lines.

(3) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements pursuant to which the institution's customer can issue short-term debt obligations in its own name, but for which the institution has a legally binding commitment to either:

(i) Purchase the obligations the customer is unable to sell by a stated date; or

(ii) Advance funds to its customer if the obligations cannot be sold.

(D) *100 Percent*

(1) Direct credit substitutes including financial-guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute shall be netted against any participations sold in that item. The amount not so sold shall be assigned to a risk-weight category using the criteria of §615.5210(f)(2).

(2) Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes.

(3) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.

(4) Forward agreements (i.e., contractual obligations) to purchase assets, including financing facilities with certain drawdown.

(iii) Credit equivalents of interest rate contracts and foreign exchange contracts (except single currency floating/floating interest rate swaps) shall be determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the notional principal amount by the following credit conversion factors as appropriate.

[In percent]

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than 1-year	0	1.0
1 year and over	0.5	5.0

(iv) Credit equivalents of single currency floating/floating interest rate

Farm Credit Administration

§ 615.5220

swaps shall be determined by their replacement cost (mark-to-market).

[53 FR 39247, Oct. 6, 1988, as amended at 54 FR 31323, July 28, 1989; 59 FR 37404, July 22, 1994; 62 FR 4446, Jan. 30, 1997]

§ 615.5215 Distribution of earnings.

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

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

§ 615.5216 [Reserved]

Subpart I—Issuance of Equities

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

§ 615.5220 Capitalization bylaws.

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

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

(b) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences,

and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(c) The number of shares and par value of equities authorized to be issued for each class of equities, except that equities that are required to be purchased as a condition of obtaining a loan and nonvoting stock into which voting stock is converted after repayment of the loan may be authorized to be issued in unlimited amounts;

(d) For Farm Credit Banks, agricultural credit banks (with respect to loans other than to cooperatives), and associations, the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement) that will be required to be purchased as a condition for obtaining a loan, which shall be not less than, 2 percent of the loan amount or \$1,000, whichever is less;

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

(f) The manner in which equities will be retired, including a provision stating that equities other than those protected under section 4.9A of the Act are retirable at the sole discretion of the board, provided minimum permanent capital adequacy standards established in subpart H of this part are met;

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

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

[53 FR 40046, Oct. 13, 1988, as amended at 62 FR 4446, Jan. 30, 1997]