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| **Title:** | **FINAL RULE WITH REQUEST FOR COMMENTS--Farm Credit System Capital Corporation; Organization--12 CFR Part 611** |
| **Date of Issuance:** | **3/13/1986** |
| **Agency:** | **FCA** |
| **Federal Register Cite:** | **51 FR 8665** |

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System Capital Corporation; Organization

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Farm Credit Administration ("FCA") has promulgated final regulations §§ 611.1140-611.1142 applicable to the Farm Credit System Capital Corporation ("Capital Corporation" or "Corporation") established under the Farm Credit Amendments Act of 1985 ("1985 Amendments") chartered by the FCA on February 24, 1986, pursuant to § 4.28A of the Farm Credit Act of 1971, as amended ("1971 Act"). The Corporation supersedes and succeeds to the assets and liabilities of the Farm Credit System Capital Corporation ("Predecessor Corporation") chartered by the FCA on June 6, 1985 and dissolved by the FCA following the chartering of the Corporation.

**DATES:** Effective March 10, 1986. Written comments must be received on or before April 9, 1986.

**ADDRESSES:** Submit comments in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of the General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Peoples, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4024.

**SUPPLEMENTARY INFORMATION:** Under the 1985 Amendments enacted on December 23, 1985, Congress authorized and directed the FCA to charter the Capital Corporation within 60 days for the purpose of carrying out a program of financial and technical assistance to Farm Credit System ("System") banks and associations (hereinafter referred to as "institutions") and their borrowers. the Corporation is designed to acquire, hold, restructure, collect and otherwise administer nonperforming assets (including loans and acquired property) from System institutions, and to provide financial and technical assistance and services to System institutions. Congress intended that the Corporation serve as a vehicle through which the System will assist itself by transferring its substantial surplus to those districts in greatest need of capital.

Congress directed that the FCA promulgate regulations to address a number of areas relating to the Capital Corporation, including the nomination and election of System representatives on the board of directors, financial assistance, corporate powers, and the capitalization of the Corporation. Section 611.1140 concerns the chartering and organization of the Corporation. It establishes a Nominating Committee ("Committee"), comprised of the Chairman or Vice Chairman of each System bank board of directors, to nominate candidates to be elected by Systems banks to the three director seats on the board of directors of the Corporation. The Committee is to hold its initial meeting as soon as possible to nominate at least two candidates for each of those board positions. The FCA election officer will conduct the initial director election within 15 days after receiving the slate of candidates from the Committee. This election procedure is designed to expedite selection of System representatives on the board in an equitable manner, enabling the Corporation to become operational as soon as possible. Subsequent elections of System board members will take place as provided in the Corporation's bylaws.

The regulation prohibits interlocking affiliations between the Capital Corporation and the Farm Credit Corporation of America ("FCCA"). The FCA endorses the purposes and mission of the FCCA, including the establishment of Systemwide policies and standards, and encourages the FCCA to press forward with its important work. However, functions and operations of the Capital Corporation must be separated from the FCCA. The legislative history of the 1985 Amendments indicates that Congress did not intend that the Corporation become a bank or bank holding company, or a vehicle for consolidating System structure or authority. Accordingly, the Capital Corporation regulations prohibit any person who serves, or has served within 3 years prior to the election, as a director, officer or an employee of the FCCA from serving on the board of the Corporation.

The regulations set director compensation for all members of the Capital Corporation board of directors. Neither System institution officers or employees who serve as directors nor any full time employee of the United States who may be appointed to the board by the Secretary of Agriculture will receive compensation in addition to their current salaries. Compensation for other directors is set at $25,000 per annum, less any compensation received from any other System institution or System service organization board activities.

This amount was determined as the minimum necessary to attract qualified persons to serve on the Corporation board to perform the very serious and complex work associated with marshaling System resources to provide financial assistance where necessary.

Section 611.1141 sets forth the rules regarding the capitalization of the Capital Corporation. The initial capitalization of the Corporation will be established by the FCA in consultation with System institutions as soon as possible. The regulation establishes the classes of stock the Corporation may issue and specifies the voting and other rights, qualifications, preferences, and restrictions that the stock may carry. The regulations are designed to provide ample flexibility in capitalizing the Corporation in a way that will optimize its effectiveness. Special classes of stock have been established to facilitate an exchange of stock for stock of the Predecessor Corporation, and for purchase by the Secretary of the Treasury or the FCA in the event Government funds are made available to the System.

Section 611.1142 addresses the powers of the Corporation. In order to assure policy and operational autonomy from System banks and associations that will be contributors or recipients of resources to the Corporation, joint employees between the Corporation and System institutions or System service organizations have been prohibited. Similarly, contracts for services with System institutions and service organizations have been limited to administrative, financial, and operational services not to include policy or management functions, assessment or financial assistance determinations, legal services, or funds management. The regulation severs any connections between the Predecessor Corporation and System institutions. The regulation also affirms that although the Capital Corporation is a Federal instrumentality, it is not a Federal agency and is not entitled to the sovereign immunity protections of the Federal Tort Claims Act. Commercial borrowings of the Corporation are permitted without further FCA approval where the Corporation is able to obtain terms better than those available from System institutions or through the issuance of Systemwide obligations, and the Corporation may join with the System in the issuance of Systemwide obligations so long as the collateral requirements of 12 CFR 615.5050 are satisfied by the Corporation or another System bank. All borrowings by the Corporation must be pursuant to a debt management policy.

Paragraph (h) of § 611.1142 is reserved for rules regarding the assessment by the Capital Corporation of System institutions. The FCA expects that those regulations will be published within several weeks, together with capital adequacy regulations otherwise required by the Act.

Paragraph (i) sets forth standards under which System institutions may be eligible for financial assistance and establishes a related application process. Financial assistance can be provided by the Corporation in the form of direct financial assistance to the requesting institution through stock purchases, loans, cash contribution, or other financing, as well as the purchase of nonaccrual loans and acquired property held by the institution. The regulations provide that any System institution may request that the Corporation purchase nonaccrual loans or acquired property, and that any institution whose stock is or will, within 90 days, be impaired shall be eligible to apply for direct financial assistance from the Corporation.

The regulation specifies the information that must be included in an application for assistance. The Capital Corporation must analyze each application taking into consideration the financial and economic condition of the institution, the System, and the available resources to the Corporation. In recognition that the Capital Corporation has limited resources, the regulation directs that the Corporation make optimum use of its resources and gives the Corporation flexibility to determine the type and amount of financial assistance. Consistent with the requirement of the Act that financial assistance by the Corporation be administered in accordance with sound business practices, the regulation provides that the Corporation shall require, as a condition precedent to providing any direct financial assistance, that a recipient institution make such changes in its operations as may be necessary to enable the institution to make a sound financial recovery. The FCA may intervene in any Corporation decision regarding direct financial assistance.

The regulation affirms that any purchase by the Corporation of nonaccrual loans or acquired property must be at fair market value. Fair market value is defined in accordance with usage of the term under generally accepted accounting principles recognizing that the Corporation will negotiate the purchase price based on the costs associated with restructuring, reamortizing, guaranteeing, administering, and liquidating a particular asset on a case by case basis. Finally, the regulation subjects the Capital Corporation to the same accounting and financial reporting requirements applicable to other System institutions.

In adopting the regulations as final regulations, the FCA noted that the Act requires that regulations be in effect before the Capital Corporation can organize and exercise all of the powers which Congress conferred under the Act. The agency has determined that in light of the congressional directive in the Amendments that the Corporation be chartered within 60 days of enactment of the 1985 Amendments and be operational as soon as possible thereafter, public notice and publication for comment are impracticable, unnecessary and contrary to the public interest. For the same reasons, the FCA has waived the 30-day period otherwise applicable under subparagraph (b)(1) of § 5.17 of the Act. In accordance with 12 U.S.C. 2252(b)(2), the regulation is effective immediately. Although the regulations will be effective immediately, the public has been afforded a period of 30 days from the date of publication to submit written comments to the FCA.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

These regulations are hereby adopted by the Farm Credit Administration the 10th day of March 1986.

Donald E. Wilkinson,

Acting Chairman.

PART 611 -- ORGANIZATION

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is being amended as follows:

§ 611.1145 [Redesignated as § 611.1130]

1. In Subpart H, § 611.1145 is redesignated as § 611.1130.

§§ 611.1150 and 611.1151 [Redesignated as §§ 611.1135 and 611.1136]

2. Subpart I is amended by redesignating §§ 611.1150 and 611.1151 as §§ 611.1135 and 611.1136 respectively.

3. Subpart J is amended by redesignating it as Subpart L and adding a new Subpart J, consisting of §§ 611.1140-611.1142 to read as follows:

Subpart J -- Farm Credit System Capital Corporation

Sec.

611.1140 Charter and organization of the Farm Credit System Capital Corporation.

611.1141 Corporation capitalization; classes of stock; dividends; transfers, exchanges, and retirements.

611.1142 General corporate powers.

Authority: Secs. 4.28A-4.28L, 5.17, Pub. L. 99-205, 99 Stat. 1678.

Subpart J -- Farm Credit System Capital Corporation

§ 611.1140 Charter and organization of the Farm Credit System Capital Corporation.

(a) Corporation charter. The regulations set forth in this Subpart shall be applicable to the Farm Credit System Capital Corporation (hereinafter referred to as the "Corporation") chartered by the FCA pursuant to section 4.28A of the Act. The charter of the Corporation may be amended from time to time as directed by the FCA.

(b) Board of directors. The Board of Directors of the Capital Corporation shall consist of five members, with three members to be elected by the System banks owning the voting stock in the Corporation and two members to be appointed by the Chairman of the Farm Credit Administration Board ("FCA Board"). The Board shall be expanded by operation of law to include two additional members in the event public funds are made available to the System, with the sixth board member to be appointed by the Secretary of Agriculture and the seventh member to be selected by the other six directors.

(1) FCA appointments to the Corporation Board. Members of the board of directors of the Corporation appointed by the Chairman of the FCA Board, shall serve at the pleasure of the Chairman.

(i) Qualifications. Each appointed director must be a citizen of the United States and experienced in financial services and credit. No person who is a borrower from, a shareholder in, or a director, officer, employee, or agent of any System institution may serve as an appointed director. No person shall be eligible for appointment if within 5 years preceding the commencement of the term he or she has been a director, salaried officer or employee, or agent of the FCA or a salaried officer or employee of any System institution. No appointed director shall, within 2 years after the date he or she ceases to be a member of the board of the Corporation, be elected, appointed, or designated to serve as an officer, employee or agent of any other System institution or System service organization, or of the FCA.

(ii) Terms. Each appointed director shall serve a 2 calendar year term, except that the director first appointed by the Chairman shall serve a term ending December 31, 1986. Appointed directors shall serve until their successors have been duly seated and may serve successive terms. Vacancies to terms shall be filled by appointment.

(2) Farm Credit System Bank nominations and elections to the board.

(i) Nominating committee. Nominations for election to the board of directors of the Corporation by Farm Credit System banks shall be made by a Nominating Committee ("Committee") of the Corporation comprised of the Chairman or the Vice Chairman of each System bank board of directors. The Committee shall meet prior to each election at an annual or special meeting of the stockholders of the Corporation held to fill a vacancy or expiring term on the board. A meeting of the Committee may be facilitated by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. A majority of the Committee shall constitute a quorum for transacting business of the Committee. The Committee shall keep written minutes of its proceedings which shall be maintained with the corporate records of the Corporation.

(ii) Nominee qualifications and eligibility. The Committee shall select candidates for election as directors to respective terms in the following three categories:

(A) Persons from a System institution and a Farm Credit district that are projected by the FCA to be a net contributor to the Corporation during the year of the election;

(B) Persons from a System institution and a Farm Credit district that are projected by the FCA to be a net recipient from the Corporation during the year of the election; and

(C) One member without regard to the restrictions for each position in paragraph (b)(2)(ii) (A) and (B) of this section.

In selecting nominees, the Committee shall endeavor to select candidates in a manner that assures equitable and adequate representation on the board of directors of the net contributors and net recipients as defined in 12 CFR 611.1142(1), all types of System institutions, System borrowers, and the public interest. No person may be elected to serve on the board of directors of the Corporation who serves, or has served within 3 years prior to the election, on the board of directors or as an officer or employee of the Farm Credit Corporation of America or any subsidiary thereof.

(iii) FCA determination of net contributors and recipients. Prior to each meeting of the stockholders of the Corporation held to fill a vacancy on the board of directors, the FCA Board shall provide the Committee with a list of System institutions and Farm Credit districts that are projected to be net contributors of capital to, or net recipients of capital from, the Corporation for the calendar year as defined in 12 CFR 611.1142(1). If a System institution's status as a net contributor or net recipient changes before the FCA Board makes its next annual projection, then its status as changed shall determine the eligibility of persons from that institution for nominations for any elected director vacancies occurring after the change.

(iv) Elections generally. The initial election of directors shall be conducted in accordance with the procedures set forth in paragraph (b)(3) of this section. Subsequent elections shall be conducted in the manner as provided in the bylaws of the Corporation.

(v) Terms. Each elected director shall serve for a term of 2 calendar years except that the initial term of the director elected to the position in paragraph (b)(2)(ii)(C) of this section shall end on December 31, 1986. Elected directors, shall serve until their successors are duly seated, may be removed for cause as provided in the Articles of Incorporation of the Corporation, and may serve for successive terms. Vacancies shall be filled by election in accordance with this section.

(vi) Elected director vacancies. The office of any elected director shall become vacant in the event such director:

(A) Files a petition for relief in voluntary bankruptcy, or otherwise voluntarily institutes suit under the applicable Federal bankruptcy, or Federal or State insolvency, receivership, or conservatorship laws; or

(B) Is adjudged a debtor in an involuntary Federal bankruptcy proceeding or placed in receivership or conservatorship in a Federal or State proceeding; or

(C) Seeks reorganization under the Federal bankruptcy laws for personal business interests or that of a corporation in which the director owns the plurality interest; or

(D) Is a party to a foreclosure proceeding (judicial, deed in lieu of foreclosure, or otherwise) brought by any System institution, service organization or other financial institution and involving property in which the director has an interest; or

(E) Is convicted of any felony while holding office; or

(F) Has a loan in his or her name, or in the name of a corporation in which the director owns a plurality interest, or in the name of a partnership in which he or she is a general or limited partner, from a System institution or other financial institution, which loan is placed by the institution in nonaccrual status; or

(G) Is declared legally incompetent or becomes physically or mentally incapacitated as is determined by the remaining directors of the board; or

(H) Resigns or is removed for cause by the remaining directors of the board.

All vacancies shall be filled under the general nomination and election procedures set forth in this paragraph.

(3) Initial nomination and election. The initial nomination and election of the board of directors of the Corporation shall be in accordance with the procedures set forth in paragraph (b)(2) of this section, except as provided herein.

(i) Initial meeting of the Nominating Committee. The Committee shall hold its initial meeting on call of the FCA election officer at a mutually convenient time and place not later then 15 days after the issuance of the charter of the Corporation. At the initial meeting, the Committee shall select at least two candidates from each of the categories specified in paragraph (b)(2)(ii) of this section, and shall ascertain that all candidates are willing to stand for election and serve as directors of the Corporation.

(ii) Initial election. At the conclusion of its initial meeting, the Committee shall present a slate of candidates to the FCA election officer, who shall confirm that each candidate meets the qualifications for the vacancy for which he or she is nominated. The FCA election officer shall thereafter send ballots and election instructions to the Chairman of each System bank board. Each System bank shall be entitled to cast one vote for each vacancy to be filled through the election. The Chairman of the respective boards shall forward certified voting results to the FCA election officer, who, upon determining the validity of the results, shall certify the election results, inform the directors of their election and arrange a meeting of the initial board as soon as practicable.

(4) Expanded board membership. In the event that the Secretary of the Treasury purchases any obligation of the Corporation, including stock, the board of directors of the Corporation shall be expanded to include two members as follows:

(i) One member shall be appointed by the Secretary of Agriculture; and

(ii) One member shall be selected by the Corporation board of directors, including the appointee of the Secretary of Agriculture, which member shall not be a stockholder in, or a borrower from, or an employee or agent of any System institution, nor a Government employee; and

(iii) These directors shall serve as long as any obligations of the Corporation purchased by the Secretary of the Treasury remain outstanding. The director appointed under paragraph (b)(4)(i) of this section shall serve at the pleasure of the Secretary of Agriculture, and the director selected under paragraph (b)(4)(ii) of this section shall be removable for cause by the unanimous vote of the remaining directors.

(5) Compensation of directors. Elected directors of the Corporation who also serve as officers or employees of any System institution or System service organization shall receive no additional compensation for service on the board of the Corporation, but shall be entitled to receive reimbursement from the Corporation for reasonable travel and other expenses incurred in connection therewith. A full-time employee or officer of the United States appointed as a director of the Corporation by the Secretary of Agriculture shall receive no additional compensation for service on the board of the Corporation and shall obtain reimbursement for travel and related expenses from his or her employer. All other directors of the Corporation shall be compensated for service on the board at the rate of $25,000 per annum (less any compensation received by the person for serving on the board of directors of any System institution or System service organization), and shall be entitled to reimbursement by the Corporation for reasonable travel and related expenses incurred in connection therewith.

(c) Chief Executive Officer. The chief executive officer or any acting chief executive officer of the Corporation shall be selected by the board, and approved by the FCA under procedures as it shall establish. The chief executive officer shall have such duties and responsibilities as set forth in the bylaws of the Corporation.

§ 611.1141 Corporation capitalization; classes of stock; dividends; transfers, exchanges, and retirements.

(a) Capitalization. The FCA shall determine the amount of the initial capitalization of the Corporation pursuant to section 4.28K of the Act and prescribe assessments therefore in accordance with 12 CFR 611.1142. Thereafter, the Corporation shall maintain minimum capital levels established under section 4.3 of the Act and 12 CFR Part 615. If the Corporation fails to meet the capital level, the FCA may require System institutions to contribute additional capital to the Corporation in accordance with section 4.28G of the Act.

(b) Classes of Stock. The Corporation may issue the following classes of stock in such amounts, at such times, and in such manner as will enable the Corporation to carry but its purposes as provided in section 4.28B of the Act. The Corporation shall not be required to issue any class of stock other than Class A voting stock to all System banks, Class D nonvoting preferred stock to holders of stock in the predecessor Farm Credit System Capital Corporation ("Predecessor Corporation") to which the Corporation succeeded pursuant to section 4.28H of the Act, and Class E stock to the Secretary of the Treasury or the FCA as provided herein.

(1) Class A Voting Common Stock: One share of Class A stock shall be issued to each System bank upon the chartering of the Corporation regardless of whether the bank is a net contributor to, or net recipient from, the Corporation. No other shares of Class A stock shall be issued. No dividend shall be declared or paid on Class A stock.

(2) Class B Nonvoting Common Stock: Class B nonvoting common stock may only be issued to, and held by, System banks and associations contributing to the capital of the Corporation pursuant to sections 4.1 and 4.28G of the Act in such amounts as necessary to provide adequate capital to the Corporation. Stock may be held by the supervising bank in the name of, or on behalf of, any association purchasing stock. Class B stock may bear dividends as provided in the Corporation bylaws.

(3) Class C Nonvoting Preferred Stock: Class C nonvoting preferred stock may only be issued to, and held by, System institutions contributing to the capital of the Corporation in such amounts as necessary for the Corporation to purchase loans and other assets from any System institution as authorized under 4.28G of the Act. Class C stock may bear dividends as provided in the Corporation bylaws.

(4) Class D Nonvoting Preferred Stock: Class D nonvoting preferred stock shall only be issued to, and held by, stockholders of the Predecessor Corporation in exchange, in equal value for all of the stock held by the holders in the Predecessor Corporation in accordance with section 4.28H of the Act, this Subpart J, and the charter of the Corporation. Class D stock may bear dividends as provided in the Corporation bylaws.

(5) Class E Nonvoting Preferred Stock: Class E nonvoting preferred stock may only be issued to, and held by, the Secretary of the Treasury or the FCA under such terms and conditions, including retirement thereof, as may be determined by the Secretary or the FCA.

(6) Any additional class of stock for other special purposes, may be issued having such preferences, rights, and qualifications as established by the Corporation board, set forth in the bylaws, and approved by the FCA.

(7) Classes of stock may be issued in one or more series within class, having such par value, voting or nonvoting powers, designations, preferences, rights, qualifications, limitations, or restrictions as shall be expressly stated in these regulations, the Articles of Incorporation, or the bylaws. All stock shall be issued in book-entry form unless otherwise provided by the board of directors of the Corporation. The holders of nonvoting common and preferred stock may receive dividends at such rates, on such conditions, and at such times as stated in the bylaws and subject to the minimum capital requirements established under section 4.3 of the Act and 12 CFR Part 615.

(c) Transfer, exchanges and retirements.

(1) Class A stock may not be transferred, exchanged, pledged, or hypothecated.

(2) All other classes of stock of the Corporation shall be transferred, exchanged, pledged, or hypothecated as provided in the bylaws, except that stock may only be transferred to eligible holders of such stock.

(3) Stock of the Corporation may be retired consistent with applicable provisions of the bylaws and subject to the minimum capital requirements established under section 4.3 of the Act, and FCA regulations and directives. Class E stock shall be retired as determined by the Secretary of the Treasury or the FCA, as the case may be.

(i) Class A stock may be retired only upon the liquidation of the Corporation, at book value and after all other classes of Corporation stock have been retired.

(ii) Class B stock may be retired at book value.

(iii) Class C stock may be retired at book value as assets that were purchased from the proceeds of the stock issuance are sold. Class C stock shall be retired pro rata of all holders at book value, not to exceed par, except upon the liquidation of the Corporation.

(iv) Class D stock may be retired at book value from the income and proceeds of the sale of the assets of the Predecessor Corporation.

§ 611.1142 General corporate powers.

The Corporation shall have the corporate powers set forth in the Act and the Articles of Incorporation.

(a) Bylaws. The Corporation shall operate under the direction of the board of directors pursuant to bylaws adopted by the board and approved by the Farm Credit Administration.

(b) Litigation. As is provided in 28 U.S.C. 2680(n) with respect to Federal land banks, Federal intermediate credit banks, and banks for cooperatives, the United States is not liable for any activities of the Corporation, and the Corporation is not entitled to the sovereign immunity protections of the Federal Tort Claims Act. The Corporation shall complain and defend itself in courts of competent jurisdiction in the same manner as any other System institution. The Corporation shall obtain necessary insurance as permitted in § 4.28G(a)(10) of the Act to protect against such claims.

(c) Operations. The Corporation shall be operated on a sound business basis, and its directors, officers, employees, and agents shall be subject to the standards of conduct provisions set forth in 12 CFR Part 612, Subpart B. The board of directors shall have its meetings and conduct business at the principal offices of the Corporation unless telephonic or other communications equipment is employed. In addition, in order to ensure that transactions between the Corporation and System institutions are conducted impartially and on a sound business basis, no director, officer, employee, or agent of any System institution or System service organization may be affiliated with or employed by the Corporation in a joint capacity, except as an elected director of the Corporation where otherwise eligible. Any joint officer or employee of any System institution and the Predecessor Corporation must resign from the System institution to remain an employee of the Corporation.

(d) Contracts. The Corporation may contract with System institutions and System service organizations for financial, administrative, or operational services, provided that no System institution or System service organization, or their agents shall be engaged to provide services to the Corporation related to assessment or financial assistance determinations, legal services, funds management, or any policy or management functions, and no System institution or service organization shall be engaged to provide loan or acquired property valuation services. The Corporation may contract with any party to service performing or nonaccrual loans or manage acquired property purchased from any System institution in accordance with policies and procedures established by the Corporation. If the Corporation cannot engage any association or other party to service such loans on terms acceptable to the Corporation, the Corporation may service the loans directly.

(e) Commercial borrowing. The Corporation may borrow from any commercial bank on its own responsibility on such terms and conditions as it may determine without any additional FCA approval where it can obtain such funds at terms, conditions, and rates not otherwise available through loans from other System institutions or through the issuance with System banks of Systemwide obligations under § 4.2(d) of the Act.

(f) Systemwide obligations. The Corporation shall not join with the other System banks as a primary obligator, within the meaning of § 4.4(a) of the Act, on an issue of Systemwide obligations unless the Corporation meets the collateral requirements established for System banks under § 4.3(c) of the Act and 12 CFR 615.5050, or one or more System banks provide the Corporation with collateral in excess of its own collateral obligations to support the Corporation's primary liability on the Systemwide issuance. On an issuance of Systemwide obligations in which the Corporation joins but is not primarily liable, the Corporation shall be jointly and severally liable on such obligations to the same extent as each System bank under § 4.4(a) of the Act.

(g) Debt policy. The Corporation may issue consolidated or Systemwide obligations or borrow funds from other System institutions or commercial banks only in accordance with a debt management policy adopted by the Corporation's board of directors and approved by the FCA.

(h) [Reserved].

(i) Financial assistance. As soon as practicable after the appointment of a chief executive officer, the Corporation shall establish procedures consistent with this section by which System institutions may apply to the Corporation for financial assistance, and shall make those procedures available to all System institutions. The Corporation may purchase nonaccrual loans and acquired property from System institutions in accordance with paragraph (j) of this section. The Corporation may also provide direct financial assistance to System institutions through stock or other equity purchases, loans, participations, cash contributions, the assumption of some portion of receiving institution's outstanding debt obligations, or any combination of the foregoing. Any request for direct financial assistance shall be subject to the review and direction of the FCA. The Corporation shall administer direct financial assistance to System institutions according to the standards and criteria set forth below:

(1) Eligibility and application. A System institution whose stock is impaired or will be impaired within 90 days based on information acceptable to the Corporation may apply to the Corporation for financial assistance by submitting an application containing the following:

(i) A statement of the efforts taken by the institution and its Farm Credit district to improve its financial position; and

(ii) A statement of the efforts taken by the institution to limit financial deterioration through merger, consolidation, or other form of corporate reorganization; and

(iii) A statement of the current activity and ability of other System institutions to service the borrowers in the requesting institution's territory; and

(iv) A business plan for correcting the institution's operational problems, including changes in management and the board of directors, credit administration, loan approval practices, and loan collection activities, and any requirements or conditions directed by the FCA pursuant to § 4.3 of the Act; and

(v) The institution's most recent quarterly financial statements along with comparative statements for the previous year; and

(vi) The institution's most recent FCA report of examination, or bank credit review adopted by the FCA; and

(vii) The institution's most recent report of financial condition certified by independent public accountants or in such form approved by the Corporation; and

(viii) The financial and interest rate projections of the institution as specified by the Corporation; and

(ix) A proposed budget of the institution for the current and next fiscal year; and

(x) Such other financial or other information as the Corporation may request.

(2) The Corporation shall analyze each application for financial assistance taking into consideration the financial needs of the institution, the financial and economic condition of the Farm Credit district in which the institution operates, the financial condition of the System generally, and whether the institution meets the following criteria:

(i) The financial condition of the institution has deteriorated to insolvency as provided in section 4.12(b)(1) of the Act; and

(ii) The institution can no longer provide a continuing source of agricultural credit in its territory and no other System institution operating under the same title of the Act is able to provide adequate services in the territory served by the institution; and

(iii) The FCA has not charged that the institution is engaging in any unsafe and unsound practice that management has not agreed to correct by means acceptable to the FCA; and

(iv) The institution has agreed with the Corporation to a business plan, including any requirement by the FCA pursuant to section 4.3 of the Act, designated to correct stock impairment of the institution.

(3) A determination of the type and amount of direct financial assistance for any System institution meeting the eligibility requirements of paragraph (i)(1) of this section shall be in the discretion of the Corporation taking into consideration the financial condition of the requesting institution, the credit needs of creditworthy borrowers served by the institution, the minimum capital requirements of the institution established under section 4.3 of the Act and 12 CFR Part 615, and the financial and economic condition of the individual Farm Credit district involved and the entire System generally. The Corporation shall structure the financial assistance package in the most cost effective manner giving the recipient institution the greatest benefit from the assistance and ensuring that the recipient institution will use the resources optimally. In no event shall the amount of direct financial assistance to any System institution exceed that necessary to correct any impairment of voting stock or participation

certificates of the institution held by its borrowers, unless approved by the FCA. No institution shall receive both direct financial assistance from the Corporation and loss sharing assistance to which it may be entitled under either district or Systemwide loss sharing or capital preservation agreements. The Corporation shall reject any request for financial assistance if it concludes that the Farm Credit district involved has adequate resources to correct any stock impairment of the requesting institution.

(4) The Corporation shall require in each instance, as a condition precedent to its extension of direct financial assistance, that the eligible institution make such modifications in its operations as are or may be necessary to enable the institution to make a sound financial recovery. Such modifications shall include, but not limited to, changes in the institution's directors, officers, employees and agents; credit approval and administration policies, procedures, and practices; and such other actions as a reasonable and prudent creditor would require in similar circumstances. The Corporation may also require the receiving institution to sell to the Corporation loans and related assets described in paragraph (j) of this section. All conditions for assistance shall be set forth in the financial assistance agreement between the Corporation and the receiving institution, and must be consistent with any business plan approved by the FCA under section 4.3 of the Act and any consent agreement or order between the System institution and the FCA. The Corporation shall keep an accounting of all direct financial assistance received by any System institution for repayment purposes. The Corporation shall monitor compliance with such condition precedents and may subsequently impose any additional operational requirements of the institution as it may deem necessary to effectively apply the financial assistance. The Corporation may terminate or withdraw any financial assistance where the receiving institution fails to comply with conditions or requirements so imposed.

(5) Prior to providing direct financial assistance to any institution, the Corporation may redeem any nonvoting stock, participation certificates, or other equities of the Corporation held by the institution receiving financial assistance.

(j) Purchase of assets. At the request of any System institution, the Corporation may purchase loans or interests in loans that the institution has placed in nonaccrual status, or any acquired property held by the institution. The Corporation may also purchase from any production credit association in liquidation any performing loan that has not been purchased in a final sale by another party. In both cases, assets shall be purchased at fair market value as the term is defined under paragraph (l) of this section.

(k) Reporting requirements. The Corporation shall meet the financial disclosure, accounting, and financial reporting requirements of 12 CFR Parts 620 and 621 for System institutions.

(l) Definitions. For purposes of this Subpart --

(1) A "net contributing institution" or "net contributing district" means any System institution or district projected by the FCA Board, or as provided in section 402 of the Farm Credit Amendments Act of 1985, for the calendar year to be required to provide the Corporation with more stock, loans, cash contributions, or other form of financing through assessments by the Corporation than it receives in direct financial assistance from the Corporation. A net recipient institution or district means any System institution or district projected by the FCA Board for the calendar year to receive more direct financial assistance from the Corporation than it contributes to the Corporation through assessments of stock, loans, cash contributions or other form of financing.

(2) "Performing loan" means a loan so defined in 12 CFR 621.2(a)(20).

(3) "Nonaccrual loan" means a loan defined as a nonperforming loan in 12 CFR 621.2(a)(17).

(4) "Fair market value" shall have the same meaning as the term is defined under generally accepted accounting principles, where value is determined on the basis of facts that would be relevant to a willing purchaser and a willing seller, both of whom are knowledgeable that the assets conveyed will be converted to cash over some period of time, during which the holder will incur the usual expenses associated with administration, maintenance, disposition, and sale on liquidation.

(5) "System institution" means any Federal land bank, Federal land bank association, Federal intermediate credit bank, production credit association, or bank for cooperatives, including the Central Bank for Cooperatives, but excludes System service organizations.

(6) "System bank" means any Federal land bank, Federal intermediate credit bank, or bank for cooperatives, including the Central Bank for Cooperatives.

(7) "System association" means any Federal land bank association of production credit association.

(8) "System service organization" means any Farm Credit System unincorporated organization or incorporated organization under Title IV, Part D, sections 4.25 to 4.27 of the Act.

Subpart K [Redesignated as Subpart M and Reserved]

4. Subpart K is amended by redesignating it as Subpart M and Subpart K is reserved.

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