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| **Title:** | **RESOLICITATION OF COMMENTS--Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations--12 CFR Part 615** |
| **Date of Issuance:** | **10/5/1988** |
| **Agency:** | **FCA** |
| **Federal Register Cite:**  | **53 FR 39099** |

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

**ACTION:** Resolicitation of Comments.

**SUMMARY:** On April 5, 1988 the Farm Credit Administration Board (Board) proposed amendments to Subparts A, B, C, and O of Part 615, which govern the funding of Farm Credit System institutions by means of issuance of securities. The proposed amendments were necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987, (1987 Act), Public Law 100-233, which was enacted on January 6, 1988. The Board determined that these amendments to the regulations should be proposed for public comment. The comment period ended on June 13, 1988. After reviewing the proposed rule in the light of comments received, and incorporating changes which reflect comments received, the Board has determined that additional comment is needed on the revisions now being made to the proposed rule.

**DATE:** Written comments are due on or before November 4, 1988.

**ADDRESS:** Submit any comments in writing (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Alan Glenn, Special Examination Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4225, TDD (703) 883-4444,

 or

James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** The proposed amendments ([53 FR 16963](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/53%20FR%2016963.docx), May 12, 1988) are necessary to conform the current regulations with certain amendments to the Farm Credit Act of 1971 (Act), made by the Agricultural Credit Act of 1987 (1987 Act) Pub. L. 100-233, which was enacted on January 6, 1988.

Subpart A of Part 615 contains regulations that define the funding activities of the banks of the Farm Credit System and the role of the Federal Farm Credit Banks Funding Corporation (Funding Corporation). No comments were received concerning proposed amendments to the regulations contained in Subpart A, and the Board is making no revisions in this subpart.

Subpart B of Part 615 contains regulations concerning the collateral required for issuance of obligations by Farm Credit System institutions. Comments were received from the Farm Credit Corporation of America (FCCA) and the Farm Credit System banks in the Springfield District concerning proposed amendments to regulations contained in Subpart B of Part 615.

FCCA commented that proposed § 615.5050 might be read to imply a requirement that promissory notes given in conventional banking transactions be collateralized. Regulations of Subpart B of Part 615 are meant to protect investors in bonds, notes, debentures, and similar obligations by setting minimum standards for collateral required to support the issuance of those obligations. These standards are not meant to require that all credit extended to a Farm Credit System institution from whatever source be similarly collateralized, nor to restrict commercial banks and other creditors from making their own credit decisions in private lending transactions. Accordingly, § 615.5050(a) has been revised to delete the words "all other known and recorded liabilities."

The Farm Credit System banks in the Springfield District (Springfield) commented concerning proposed § 615.5050(c). Springfield suggested that the collateral value of loans and acquired property should be their "net value less allowance for losses," and that the reference to "recovery value" in § 615.5050(c)(2) should be replaced with "net realizable value." § 615.5050(c) is now being revised to clarify the method for determining the value of collateral. The terms "recovery value" and "investment value" are eliminated. The revised § 615.5050(c)(1) provides that, in general, the collateral value of a loan is the unpaid balance of the loan, less any appropriate allowance for losses. Revised § 615.5050(c)(2) provides that the collateral value of loans in the process of liquidation or foreclosure, judgments, and real estate sales contracts are the unpaid balance of the loans, judgments or contracts, less any appropriate allowance for losses. Revised § 615.5050(c)(3) provides that the collateral value of the restructured loan is the unpaid balance of the loan, less any appropriate allowance for losses. Section 615.5050(c)(4) is redesignated as § 615.5050(c)(5) and a new § 615.5050(c)(4) provides that the collateral value of property acquired in the liquidation of loans is the book value adjusted for any allowance for losses. In order to accurately reflect the value of the collateral, the allowance for losses must be continuously updated. FCCA suggested that the proposed regulation could be read to eliminate secured interbank loans from eligible collateral. In response to the comment, the Board is adding § 615.5050(c)(6) to specifically state that a secured interbank loan may serve as collateral for obligations issued by the bank making such loan, provided that the loan is adequately secured by assets which, if held by the lending bank, would have been eligible collateral. In computing its eligible collateral, the borrowing bank is prohibited from counting the assets securing the loan. A new § 615.5045 provides definitions for "cost," "market value," "cash equivalents," "secured interbank loan," and "unpaid balance," as these terms are used in Subpart B. Comments are specifically requested on these new definitions and their application in § 615.5050.

FCCA commented that the words "or association" should be added after the word "bank" each time it appears in § 615.5060(a). FCCA also suggested that a reference to section 1.7(a) of the Act be added. The Board is making these revisions in the language of § 615.5060(a) to clarify that the entire paragraph is meant to apply not only to banks, but also to those associations which may have direct real estate lending authority.

Subpart C of Part 615 contains regulations governing the issuance of notes, bonds, debentures, and similar obligations by Farm Credit System institutions. Subpart C was revised to reflect new responsibilities of the Funding Corporation which were previously exercised by the Farm Credit System finance committees. Comments were received from the Farm Credit System banks in the Baltimore District, the Farm Credit System banks in the Texas District, the Central Bank for Cooperatives, and FCCA concerning the proposed amendments to regulations contained in Subpart C.

FCCA indicated concern that reference to sales of securities to "members of the general public" in § 615.5100(a) through (c) might be interpreted to preclude private placement of securities. The Board agrees and has deleted the references in § 615.5100 to "members of the general public".

Section 615.5101(b) requires that each debt obligation be authorized by a resolution of the board of directors of the issuing Farm Credit System banks. FCCA expressed concern that this regulation could be read to require that the banks adopt a specific resolution for each issue of debt. At present, each bank's board of directors authorizes Systemwide obligations by a periodic resolution which states a maximum amount of obligations which may be issued. The proposed regulation, which is clarified by deleting the words "issuance of" from the introductory paragraph, does not require a change in this practice, but does require that each obligation of whatever kind be authorized by an appropriate resolution of the board of directors of each issuing bank. The frequency of resolutions consistent with the duty of directors to exercise their judgment effectively is left to the determination of the board of directors of the issuing bank.

Section 615.5101(e)(1) requires consultation by Farm Credit System representatives with the Secretary of the Treasury. FCCA suggested that, in order to avoid uncertainty, FCA should, in its regulation, expressly designate the Funding Corporation as the Farm Credit System's representative for this purpose. The FCA Board does not agree with the FCCA suggestion. The decision whether to delegate this responsibility to the Funding Corporation is a management decision for the Farm Credit System banks.

The Farm Credit System banks in the Texas District and the Central Bank for Cooperatives raised a concern that § 615.5102(a) might be read to imply that the Funding Corporation has authority to approve the amount, maturities, rates of interest, terms and conditions of individual bank obligations. The FCA Board amends § 615.5102(a) to clarify that this aspect of the Funding Corporation's authority is limited to joint, consolidated and Systemwide obligations.

The Farm Credit System banks in the Texas District (Texas) also expressed concern that the revision of § 615.5102(a) not imply that the Funding Corporation has absolute authority over the funding operations of individual banks. Texas points out that the former law provided that the finance committees determined each bank's participation in joint, consolidated and Systemwide debt issues. Texas suggests that the phrase "taking into consideration the needs of the individual System banks" be added after the word "Act." The Board does not make this revision of § 615.5102(a), but does revise the wording of § 615.5101(a) to make it more consistent. Section 615.5102(a), as originally proposed, basically restates section 4.9. Section 4.9 of the Act and § 615.5102(a) both include the words "acting for the banks of the Farm Credit System." Sensitivity to the needs of the banks is also built into the Funding Corporation's structure, since four of the members of its board of directors are required to be current or former directors of System banks, and three are required to be Chief Executive Officers or presidents of Farm Credit System banks. Section 615.5102 was not meant to change the relationship of the Funding Corporation with the Farm Credit System banks. It is not the intent of this section or the regulation to further define the relationship that exists between the Funding Corporation and the Farm Credit System banks. Although it is correct that the Funding Corporation does not have absolute authority over the funding of the banks, the amendment of § 615.5102(a) suggested by Texas is unnecessary.

The FCCA requests clarification of § § 615.5101(d) and 615.5102(c), which require FCA approval of each issue of debt. FCCA is concerned that these sections might be interpreted to preclude the current FCA method of approving guidelines for sales of daily discount notes. At present, the Farm Credit System banks utilize several different marketing strategies, each requiring different FCA approval methods to provide necessary program monitoring and to enable the Funding Corporation to market the debt instruments. The Board believes that the method of FCA's approval should continue to have flexibility to adjust to the Farm Credit System banks' funding program and does not prescribe in § 615.5101 or § 615.5102 only one method of FCA approval of the issuance of securities.

In order to clarify FCA approval responsibility for all debt issues, the Board is revising § 615.5101(d) to eliminate the cross-reference to § 615.5102.

The Farm Credit System banks in the Baltimore District commented that proposed changes in Part 615 did not appear to affect the mode of operations of its Puerto Rican subsidiary. The comment was addressed to the application of the regulation to a particular institution. Each Farm Credit institution must determine for itself how the proposed regulation affects it.

Subpart 0 of Part 615 contains regulations governing the form in which Farm Credit securities may be issued. FCCA suggests that the listing of denominations in § 615.5450 is more reflective of definitive securities than a mature book-entry system. The Board agrees that specific mention of denominations other than a minimum denomination is unnecessary. However, consistent with a book-entry system, a minimum multiple amount is specified. The revised regulation deletes paragraph (b) of the proposed regulation and redesignates paragraphs (c) and (d) as paragraphs (b) and (c). FCCA commented that § 615.5450 (b) (as redesignated) should be revised to provide for issuance of consolidated notes, debentures or similar obligations, as well as consolidated bonds, in book-entry form. The Board in making this revision in § 615.5450(b) and a similar revision in § 615.5450(a), in order to standardize authority for the issuance of debt securities.

It is unnecessary to add additional language to § 615.5450(c) (as redesignated), as suggested by FCCA, in order to permit delegation of approval of issuance of securities in definitive form, since such authority may generally be delegated.

**List of Subjects in 12 CFR Part 615**

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

For the reasons stated in the preamble, Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 615 -- FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS**

1. The authority citation for Part 615 continues to read as follows:

**Authority:** Secs. 4.3, 4.9, 4.14B, 5.9, 5.17, 6.20, 6.26. 12 U.S.C. 2154, 2160, 2202b, 2243, 2252, 2278b, 2278b-6; Sec. 301(a) of Pub. L. 100-233.

**Subpart A -- Funding**

2. Sections 615.5000, 615.5010, and 615.5030 of Part 615 are revised to read as follows:

**§ 615.5000 General responsibilities.**

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

**§ 615.5010 Funding corporation.**

(a) The Funding Corporation is authorized to issue, market, and handle System obligations and, handle, upon request of the banks, interbank or intersystem flows of funds and investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of obligations through the Funding Corporation by negotiation, offer, bid, syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

**§ 615.5030 Borrowing from commercial banks.**

(a) The System bank boards, by resolution, shall authorize all commercial bank borrowings.

(b) The Financial Assistance Corporation may borrow from commercial banks only with the approval of the Farm Credit Administration.

3. Subpart B of Part 615 is revised to read as follows:

**Subpart B -- Collateral**

Sec.

615.5045 Definitions.

615.5050 Collateral requirements.

615.5060 Special collateral requirement.

615.5090 Reduction in carrying value of collateral.

**Subpart B -- Collateral**

**§ 615.5045 Definitions.**

(a) "Cost" means the actual amount paid for any asset.

(b) "Market value" means the price at which a willing seller would sell to a willing buyer, neither under any compulsion to buy or sell.

(c) "Cash equivalents" include obligations of the United States or any agency thereof directly or fully guaranteed by the United States, and other items which can be converted into cash without substantial difficulty or loss.

(d) "Unpaid balance" means total principal and accrued interest owed.

(e) "Secured interbank loan" means a loan from one Farm Credit System bank to another Farm Credit System bank, secured by assets of the borrowing Farm Credit System bank.

**§ 615.5050 Collateral requirements.**

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or other similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, real or personal property acquired in connection with loans made under the Act, other bank assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents in an aggregate amount equal to the sum of consolidated and Systemwide bonds, Farm Credit investment bonds, consolidated Systemwide notes, other notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as otherwise provided in this paragraph, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid balance of such loans adjusted for any allowance for loan losses (except as provided for in § 615.5090).

(2) The collateral value of loans in process of liquidation or foreclosure, judgments, and real estate sales contracts shall be the unpaid balance of such loans, judgments, and contracts adjusted for any allowance for losses.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loans adjusted for any allowance for losses.

(4) The collateral value of property acquired in the liquidation of loans shall be the book value of such property adjusted for any allowance for losses.

(5) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or Part 614 of these regulations.

(6) Collateral may include the collateral value of secured interbank loans, computed as provided in § 615.5050(c)(1), provided that the assets securing the loan could serve as collateral supporting the issuance of obligations under § 615.5050(a). In computing its eligible collateral, the borrowing bank shall not count the assets securing such loan.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

(1) Adequate safekeeping facilities;

(2) Methods to determine that debt instruments meet all requirements of law and regulations;

(3) A report signed by an authorized bank officer at each regular meeting of the board of directors certifying the eligibility and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and

(4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

**§ 615.5060 Special collateral requirement.**

(a) If the counsel for a System bank or association has determined, in writing, that bank or association procedures provide sufficient safeguards to assure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien, or its equivalent, on interest in the primary real estate security, an attorney lien certification need not be obtained at the time a note is accepted for collateral. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of loan closing, unless, before the end of such period, an attorney has certified that the interest of the bank or association in the primary real estate security for the loan is a first lien on the borrower's interest or its equivalent from a security standpoint.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of § 615.5050(a).

**§ 615.5090 Reduction in carrying value of collateral.**

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

**Subpart C -- Issuance of Bonds, Notes, Debentures and Similar Obligations**

4. Sections 615.5100, 615.5101, and 615.5102 are revised to read as follows:

**§ 615.5100 Authority to issue.**

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

(a) Notes, bonds, debentures, or other similar obligations;

(b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act;

(c) Systemwide obligations, together with other banks of the System; and

(d) Investment bonds to the authorized purchased subject to the limitations contained in the regulations set forth in Subpart D.

**§ 615.5101 Requirements for issuance.**

Each debt obligation shall meet the following requirements:

(a) each obligation except investment bonds shall be issued through the Federal Farm Credit Banks Funding Corporation acting for System banks.

(b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefore is unable to pay.

(c) Each issuance of debt obligations shall meet the collateral requirements set forth in Subpart B.

(d) Each issuance of debt obligations shall be approved by the Farm Credit Administration.

(e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by System representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secretary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act.

**§ 615.5102 Issuance of debt obligations through the funding corporation.**

(a) The amount, maturities, rates of interest, terms and conditions of participation by the System banks in each issue of joint, consolidated or Systemwide obligations shall be determined by the Funding Corporation acting for the banks of the System established pursuant to section 4.9 of the Act, subject to the approval of the Farm Credit Administration in accordance with this section.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Administration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

5. Section 615.5105 is amended by revising paragraph (b) to read as follows:

**§ 615.5105 Consolidated systemwide notes.**

\* \* \* \* \*

(b)( Prices shall be on a discount yield basis or as determined by the Funding Corporation.

\* \* \* \* \*

**Subpart O -- Issuance of Farm Credit Securities**

6. Section 615.5450 is revised to read as follows:

**§ 615.5450 Book entry and definitive notes and bonds.**

(a) The System banks operating under the same title of the Act may issue consolidated notes, bonds, debentures, and other similar obligations dated on or after January 1, 1978, in book-entry form, in denominations of $1,000 or multiples thereof. There are still outstanding consolidated bonds of the Federal land banks dated before January 1, 1978, in definitive form in denominations of $1,000, $5,000, $10,000, $50,000, $100,000, and $500,000.

(b) The System banks may issue consolidated Systemwide notes, bonds, debentures, or other similar obligations in book-entry form, in denominations of $1,000 or multiples thereof for issues with an original maturity over 1 year and 1 month and $5,000 or multiples thereof for issues with an original maturity of under 1 year and 1 month.

(c) Consolidated and consolidated Systemwide bonds and discount notes may be issued in definitive form as determined to be appropriate by the Funding Corporation and as approved by the Chairman of the Farm Credit Administration.

7. Sections 615.5451 through 615.5453 are removed and reserved.

**§ 615.5451 through 615.5433 [Removed and Reserved]**

8. Sections 615.5460 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 615.5460 Definition of terms for book-entry issuance of Farm Credit securities.**

\* \* \* \* \*

(b) "Banks of the Farm Credit System" means all of the Farm Credit Banks or all the banks for cooperatives, or all of the banks of the System.

(c) "Farm Credit securities" means consolidated notes, bonds, debentures, or other similar obligations of the System banks and Systemwide notes, bonds, debentures, or similar obligations issued under the Farm Credit Act of 1971, or laws repealed thereby, the completion and delivery of which is or has been undertaken by a Reserve Bank as agent of the banks of the System.

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**§ 615.5497 [Removed and Reserved]**

6. Section 615.5497 is removed and reserved.

Date: September 28, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-22861 Filed 10-4-88; 8:45 am]

BILLING CODE 6705-01-M