|  |  |
| --- | --- |
| **Title:** | **PROPOSED RULE--Assessment and Apportionment of Administrative Expenses; General Provisions--12 CFR Parts 607 and 618** |
| **Date of Issuance:** | **10/15/1992** |
| **Agency:** | **FCA** |
| **Federal Register Cite:**  | **57 FR 47288** |

FARM CREDIT ADMINISTRATION

12 CFR Parts 607 and 618

Assessment and Apportionment of Administrative Expenses; General Provisions

RIN 3052-AB19

**ACTION:** Proposed rule.

**SUMMARY:** The FCA proposes new regulations at 12 CFR part 607 that would prescribe the method by which the assessments that are required to pay the FCA's annual administrative expenses are apportioned among and paid by Farm Credit System (System) institutions and other entities that are required to pay such expenses. The proposed regulations would supersede existing assessment regulations in 12 CFR part 618, which are proposed to be rescinded.

These proposed regulations are based in large part on the consensus recommendations of the FCA Assessment Regulations Negotiated Rulemaking Committee (Committee), which was established by the FCA to help develop the assessment regulations.

**DATES:** Comments must be submitted on or before November 16, 1992.

**ADDRESSES:** Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all comments received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Robert S. Child, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4189, TDD (703) 883-4444, or

William L. Larsen, Senior Attorney, Regulatory and Legislative Law Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:**

**I. The Assessment Regulations**

The operating expenses of the FCA in administering the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.* (Act) are paid by the institutions it regulates and examines. Section 5.15 of the Act establishes the process by which System institutions are assessed for their share of FCA administrative expenses. Prior to the beginning of every fiscal year, the FCA must determine the cost of administering the Act for succeeding year as well as the amount of assessments needed pay such expenses and maintain a necessary reserve. On the basis of the assessment determination, the FCA must apportion the assessment among System institutions in a manner "determined to be equitable" by the FCA. 12 U.S.C. 2250(a)(2)(A). The FCA then assesses and collects the allocations on a periodic basis during the fiscal year. Regulations implementing section 5.15 of the Act are found in § 618.8230 of this chapter.

The current FCA assessment process was developed before Congress enacted the Agricultural Credit Act of 1987. Public Law 100-233, (1987 Act). The 1987 Act provided for substantial restructuring of the System and gave impetus to, among other developments, the creation of Farm Credit Banks (FCBs) from the merger of Federal land banks and Federal intermediate credit banks, the formation of the National Bank for Cooperatives (CoBank) from the merger of 10 banks for cooperatives (BCs) with the Central Bank for Cooperatives, and the merger of some Federal land bank associations (FLBAs) and production credit associations (PCAs) into agricultural credit associations (ACAs). The 1987 Act also increased the complexity of and the requirements applicable to the regulatory, supervisory and examination functions of the FCA.

The structural and regulatory changes brought about by the 1987 Act led the FCA to examine its current assessment process to determine whether it remained valid and fair. On the basis of this examination, the FCA concluded that the current assessment formula needed to be revised. In April, 1991, the FCA published a Notice of Proposed Rulemaking that proposed to establish and asset-based formula for assessments of System institutions. [56 FR 13424](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/56%20FR%2013424.docx), April 2, 1991. The comments received indicated a concern that the asset-based formula as proposed would create inequities due to the method by which assets of banks and associations would be counted for assessment purposes . Further, some commentors strongly urged that alternative assessment procedures be explored before adoption of an asset-based formula.

**II. The Negotiated Rulemaking**

Recognizing that a fuller participation of affected institutions in a further exploration of assessment allocation procedures could be beneficial, the FCA considered various alternatives for public participation in the rulemaking process. The FCA concluded that negotiated rulemaking might provide a creative means to achieve an equitable assessment formula and was, therefore, in the public interest. In accordance with the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581 *et seq.,* the FCA published notice of its intent to establish a negotiated rulemaking committee to develop and negotiate proposed amendments to its assessment regulations. [57 FR 19405](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/57%20FR%2019405.docx), May 6, 1992.

**A. The Negotiated Rulemaking Committee**

To meet the statutory and practical requirements of negotiated rulemaking, the FCA attempted to select a group of System institutions that would be as balanced and representative as possible. The FCA used four major criteria to select institutions to be represented on the negotiated rulemaking committee: (1) Type of institution, (2) size of institution, (3) financial condition of institutions, and (4) geographical location of institution. The FCA developed these criteria from responses to a Systemwide survey it conducted before initiating the negotiated rulemaking.

Members of the Committee were as follows:

*Terry D. Anders,* President, Farm Credit Services Of Mountain Plains, PCA/FLBA

*Gregory J. Buehne,* General Counsel, Farm Credit Bank of Spokane

*Larry Burbank,* President, Farm Credit Services of Eastern Missouri, FLCA/PCA

*Gale D. Cameron,* President and Chief Executive Officer, PCA/FLBA of the Midlands

*Ron Carli,* President and Chief Executive Officer, Pacific Coast Farm Credit Services, ACA

*Victor Cohen,* Assistant General Counsel, Farm Credit Administration

*Jeffrey M. Crews,* President Sacramento Valley PCA/FLBA

*Dennis DeVos,* Senior Vice President, Farm Credit Services of West Central Minnesota, ACA

*David M. Engel,* AgriBank

*Jacob F. Grigg,* President, Mountain Farm Credit, ACA

*Billy D. Harmon,* President, Lubbock PCA

*Tom Hill,* Vice President-Financial Reporting, Farm Credit Bank of Texas

*Leon "Joe" Leiser,* President and Chief Executive Officer, Ag Credit, ACA

*Richard Lorenz,* President, Colusa-Glenn PCA, FLBA of Colusa, FLCA

*Charles McCay,* Public Affairs Officer, Farm Credit Services of Mandan, PCA/FLCA

*Earle R. Steeves, III,* President and Chief Executive Officer, Farm Credit of North Central Jersey, ACA

*Glenn L. Stevens,* Executive Vice President and Chief Operating Officer, Farm Credit Bank of Baltimore

*Wayne A. Stuart,* Senior Vice President and Treasurer, Springfield Bank for Cooperatives

*Kenneth T. Sullivan,* Senior Vice President and General Counsel, National Bank for Cooperatives

*Donald W. Winters,* President and Chief Executive Officer, Farm Credit Services of Mid-America, ACA

The Federal Mediation and Conciliation Service provided a team of two neutral facilitators for the negotiated rulemaking.

***B. The Committee Proceedings and Recommendations***

The FCA issued an advisory committee charter to the Committee on June 5, 1992. In its Notice of Intent to establish this Committee (*supra,* [57 FR at 19406](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/57%20FR%2019405.docx)), the FCA noted its expectation that the Committee would consider alternative assessment procedure options to develop proposed assessment regulations that are equitable and capable of effective administration by The FCA.

The Committee met four times. The first three meetings were held at FCA's McLean, Virginia headquarters: June 8-9, 22-23, and July 7-9, 1992. The last meeting was held at the Stapleton Plaza Hotel, Denver, Colorado on July 20, 1992. Committee procedures complied with the Negotiated Rulemaking Act, *supra,* and the Federal Advisory Committee Act, 5 U.S.C. App. 2. All meetings were open to the public and meeting minutes were recorded. Following each meeting, a summary of Committee proceedings was sent to all System institutions. In addition, pertinent Committee records and documents were transferred to the FCA to become part of the public record of this rulemaking.

In accordance with section 586(f) of the Negotiated Rulemaking Act, *supra,* at the conclusion of negotiations, the Committee submitted a report to the FCA containing the consensus recommendations and views of the Committee regarding proposed amendments to the assessment regulations.

The Committee defined "consensus" in its ground rules as the agreement (or lack of opposition) of all members of the Committee. Further, the Committee ground rules defined consensus as a decision that the entire group could support, *i.e.,* a decision that was not necessarily everyone's first choice, but one that everyone could accept. All Committee actions and positions taken were on a consensus basis.

After establishing ground rules, the Committee identified a substantial number of issues that appeared pertinent to the assessment process. The Committee also examined information relating to the FCA's current assessment procedure. Before looking at different assessment options, the Committee established standards to be applied to any assessment options developed during Committee deliberations. These standards were that any assessment option should reflect the following:

1. Simple -- easy to apply and easy to understand.

2. Adaptable to future changes -- flexible.

3. In compliance with statute or law.

4. A high level of objectivity.

5. Should not drive structural change.

6. Some costs allocated on a basis that reflects cost of services.

7. Other costs divided on a basis not related to cost of services.

The Committee discussed the issue of the appropriate organizational level at which notification and payment of assessments should be made: (1) Assess by institution/bill by institution; (2) assess by institution/bill by district; or (3) bill by district/assess by district. The Committee reached consensus on assessing and billing at the institutional level.

To reach a consensus on an equitable assessment formula, the Committee examined a number of different approaches. The Committee reviewed over 30 different computer-generated scenarios testing the impact of using various factors to determine the level of assessment to be charged to institutions. As a result of its analysis and discussions, the Committee concurred that the assessment formula for banks, associations, banks for cooperatives, and the Farm Credit Services Leasing Corporation should be as follows:

30 percent = pro rata share based on institution's risk-adjusted assets.

70 percent=share based on amount of risk-adjusted assets falling into 8 tier levels, with institutions that have a CAMEL (capital, asset quality, management, earnings, and liquidity) rating of 3 paying 20 percent more and institutions that have a CAMEL rating of 4 or 5 paying 40 percent more.

The Committee also concurred that all institutions should pay a minimum assessment of $20,000, regardless of level of risk-adjusted assets.

Utilizing the standards it developed for evaluating options, the Committee concluded that this formula would be easy to apply and understand. Using risk-adjusted assets to calculate assessment levels largely eliminates the issue of where to count assets that may appear as assets of both banks and associations in some circumstances, since loans to associations are risk-weighted at 20 percent and would only be counted in the formula to that extent. The Committee concurred that risk-adjusted assets should be calculated as set forth in the FCA's capital regulations in § 615.5210(e) of this chapter.

The Committee concluded that its recommended formula is adaptable to future change and complies with section 5.15 of the Act. The Committee also found the formula to be objective and unlikely to bring about structural change in the System.

The Committee stated that it attempted to allocate some of FCA's regulatory costs on a basis that generally reflects the cost of services. Therefore, in the expectation that the FCA will expend more regulatory time and effort on institutions that have been found through the examination process to have a higher level of risk than other institutions, the formula requires that institutions having a composite CAMEL rating of 3 or 4-5, respectively, will pay a higher assessment than institutions with a 1 or 2 rating. The Committee concluded that the composite CAMEL ratings, which the FCA assigns to System institutions on the basis of its examinations of their financial condition, would be an appropriate measure of risk.

The Committee designed the risk-adjusted asset tiers that establish the amounts that institutions will pay under the 70 percent provision of the assessment formula to reflect economies of scale that can affect the examination of larger institutions. Accordingly, as an institution's level of risk-adjusted assets rises, the applicable tier assessment rate declines.

The Committee's proposed formula also incorporates the idea that all banks, associations, and designated other System entities should pay some minimum assessment, regardless of risk-adjusted asset base, to reflect a share of FCA regulatory costs and as a necessary cost of doing business as a federally chartered System financial institution. The Committee determined that the $20,000 minimum assessment fairly accomplishes this goal.

The Committee concurred that the Farm Credit System Financial Assistance Corporation, the Federal Farm Credit Banks Funding Corporation, the Farm Credit Finance Corporation of Puerto Rico, and any other entity statutorily designated as a System institution that is not a bank or association (excluding the Federal Agricultural Mortgage Corporation (FAMC)) should be assessed for estimated direct expenses plus an allocated portion of FCA indirect expenses. The Committee determined, however, that the Farm Credit Services Leasing Corporation should be assessed on the same basis as banks and associations due to the comparability of its asset base. The Committee did not attempt to determine the method of assessment for FAMC.

**III. The Proposed Assessment Regulations**

The FCA finds that the consensus recommendations of the Committee regarding proposed assessment regulations are consistent with the FCA's legal obligations under the Act. Therefore, as sanctioned by the Negotiated Rulemaking Act, *supra,* the proposed assessment regulations set forth below are based in large part on the consensus recommendations of the Committee.

***A. Assessment of Banks, Associations, and Designated Other System Entities***

The assessment formula developed by consensus of the negotiated rulemaking committee is embodied in proposed § 607.3. The total amount of the annual assessment of banks, associations, and other System entities designed by the FCA to be assessed on the same basis as banks and associations, is based on the FCA budget for each fiscal year plus a necessary reserve amount, subtracting amounts to be assessed against other System entities and reimbursements received from non-System entities. Deduction of amounts to be assessed against other System entities and reimbursements received from non-System entities will ensure that banks, associations, and designated other System entities are not assessed for costs of the FCA's activity with regard to those entities. The assessment of banks, associations, and designated other System entities net of amounts assessed other System entities is also necessary due to the separate assessment criteria for FAMC set out in section 5.15 of the Act.

The formula is applied to the FCA fiscal year budget, adjusted as described above, using the risk-adjusted asset base of the banks, associations, and designated other System entities of the System as a whole and of the individual institutions. The risk-adjusted asset base is defined in proposed § 607.2(b) and is calculated in accordance with § 615.5210(e) of the FCA capital regulations.

Thirty (30) percent of the adjusted FCA budget is assessed to each such institution based on the institution's pro rata share of the total average risk-adjusted asset base of all banks, associations, and designated other System entities.

Seventy (70) percent of the adjusted FCA budget is assessed to each bank, association, and designated other System entity based upon the amounts of the institution's average risk-adjusted asset base that fall within the eight graduated risk-adjusted asset tiers contained in the table accompanying proposed § 607.3(b)(2). The table is used to compute the amount of assessment under proposed § 607.3(b)(2) only. Neither the table nor the example of the 70 percent assessment portion calculation provided includes the 30 percent assessment portion due under proposed § 607.3(b)(1).

The assessment under proposed § 607.3(b)(2) is further adjusted to increase by 20 percent the assessment of an institution receiving an FCA composite CAMEL rating (defined in proposed § 607.2(c)) of 3 following its most recent examination preceding the assessment. The assessment would increase by 40 percent for an institution receiving a composite CAMEL rating of 4 or 5. The FCA accepts the Committee's recommendation to utilize composite CAMEL ratings as a factor in determining assessments for banks, associations, and designated other System entities. However, to ensure that CAMEL ratings of institutions remain strictly confidential, the FCA will not make public the assessments allocated to individual banks, associations, and designated other System entities.

Under proposed § 607.3(b)(3), each bank, association, and designated other System entity would be required to pay a minimum assessment of $20,000 if its total assessment as calculated under proposed §§ 607.3(b)(1) and 607.3(b)(2) amounted to less than $20,000.

***B. Assessment of Other System Entities***

Other System entities are defined in proposed § 607.2(j). While the major focus of the Committee was on the formula for assessing banks, associations, and designated other System entities, the Committee concurred with the assessment procedure set forth in proposed § 607.4(a) for other System entities (excluding FAMC). Under this proposed section, other System entities would be assessed for estimated direct expenses plus an allocated portion of FCA indirect expenses and an amount for necessary reserves.

***C. Assessment of the Federal Agricultural Mortgage Corporation***

The Committee did not attempt to develop the method of assessment for FAMC. Under section 5.15(a) of the Act, the assessment of FAMC is separate from the rest of the System. Thus FAMC's assessment is separately covered in proposed § 607.4(b). FAMC would be assessed for the estimated cost of FCA's regulation, supervision, and examination of FAMC. FAMC is not subject to an assessment for FCA's necessary reserves under section 5.15(a)(1)(B) of the Act. However, the FCA will include in its estimate of regulatory expenses sufficient funds to provide for anticipated increases in activity and significant developments in order to cover its expenses for the examination and supervision of FAMC during a fiscal year.

***D. Notification and Payment of Assessments***

Under proposed § 607.5, prior to September 15 of each year, the FCA would provide each System institution with a notice of assessment specifying the total amount of the annual assessment, the fiscal year covered by the assessment, the amounts of the installment payments and the dates on which such payments are due. For banks, associations, and designated other System entities, the notice of assessment also would include an assessment table detailing the application of the assessment formula under proposed § 607.3(b)(2). The notice of assessment would be the only billing from FCA. The total annual assessment would become an obligation of the assessed entity on October 1 of each fiscal year. However, based on the flexibility accorded the FCA in section 5.15 of the Act regarding collection of assessments, proposed § 607.5 provides that the total annual assessment would be payable not less often than quarterly in equal installments during each fiscal year. Thus, the FCA could require smaller payments more often than quarterly if it found such a payment schedule better met the needs of the System and the agency. Currently, System institutions make quarterly assessment payments.

The assessment for banks, associations, and designated other System entities that were chartered during the period July 1 through September 30 and that were not formed as a result of mergers, consolidations, or transfers of direct lending authority, would be determined by the FCA prior to December 15. A notice of assessment would be provided before December 15. The assessment would become an obligation of the institution on January 1, payable in equal installments not less often than quarterly for the remainder of the fiscal year.

For any System institution whose charter is to be canceled, all remaining installment payments on the institution's total assessment for a fiscal year become due and payable and must be provided for prior to the cancellation of the institution's charter. Institutions in receivership would be assessed in accordance with these proposed regulations, so long as they retain their charters. The FCA invites comment on whether this approach is equitable for such institutions.

Proposed § 607.6 provides that assessment payments shall be made by check, electronic funds transfer, or by such other means as the FCA may authorize. Proposed § 607.7, consistent with the Debt Collection Act of 1982, 31 U.S.C. 3711 *et seq.,* and the Federal Claims Collection Standards thereunder, 4 CFR Ch. II, provides for the payment of interest, penalties, and administrative expenses of collection on all assessments that are determined to be delinquent.

***E. Reimbursement of Other Examination Expenses***

Pursuant to 12 U.S.C 3025, the FCA is authorized and directed to examine the National Consumer Cooperative Bank, doing business as the National Cooperative Bank (NCB), and receive reimbursement from the NCB for such examinations and audits. Due to the close structural relationship between the NCB and the NCB Development Corporation (NCBDC) provided for in 12 U.S.C. 3051, the FCA also examines the NCBDC as part of its examination of the NCB. The FCA currently bills the NCBDC separately for the expenses associated with its examination by the FCA.

In § 607.2, the proposed regulations define the NCB and the NCBDC as "non-System entities." Proposed § 607.8 provides that reimbursable billings for FCA examination of non-System entities would be based on direct expenses incurred plus a portion of indirect expenses allocated on the basis of direct expenses incurred as a percentage of the total direct expenses for the FCA. Under proposed § 607.9, the FCA would bill the amounts due for its direct and indirect expenses to the non-System entities subsequent to the issuance of their respective reports of examination.

***F. Adjustments in Assessments***

Proposed § 607.10 provides that credits for overpayment and charges for underpayment of assessments shall be applied to the next applicable assessment payment due date during the current or subsequent fiscal year. Such adjustments would be made pursuant to proposed § 607.3(d) (for banks, associations, and designated other System entities), § 607.4(a)(2) (for other System entities), or § 607.4(b) (for FAMC), or if the amount allocated to System institutions at the end of the fiscal year is greater or lesser than the amount collected. If adjustments are made, the FCA shall provide the institution with a statement of adjustment at least 15 days prior to the institution's next assessment payment date. Adjustments in assessments would be made in principal amount only. Payments found to be delinquent under proposed § 607.7 are not underpayments for purposes of § 607.10.

***G. Statement of Assessments and Expenses***

Proposed § 607.11 would require the FCA, by January 15 of each calendar year, to provide each assessed System institution with a statement of assessments and expenses for the preceding fiscal year showing total assessments and other income received as applied to expenses incurred by major budget category and amounts set aside for necessary reserves. This section is intended to enhance the information currently available to System institutions pursuant to § 618.8230 of this chapter, which is proposed to be replaced by new part 607.

**List of Subjects**

*12 CFR Part 607*

Accounting, Agriculture, Archives and records, Banks, Banking, Claims, Credit, Finance, Government securities.

*12 CFR Part 618*

Agriculture, Archives and records, Banks, Banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended by adding part 607 to subchapter A and amending part 618 as follows:

**PART 607 -- ASSESSMENT AND APPORTIONMENT OF ADMINISTRATIVE EXPENSES**

Sec.

607.1 Purpose and scope.

607.2 Definitions.

607.3 Assessment of banks, associations, and designated other System entities.

607.4 Assessment of other System entities.

607.5 Notice of assessment.

607.6 Payment of assessment.

607.7 Late-payment charges on assessments.

607.8 Reimbursements for services to non-System entities.

607.9 Reimbursable billings.

607.10 Adjustments for overpayment or underpayment of assessments.

607.11 Statement of assessments and expenses.

**Authority:** Secs. 5.15, 5.17 of the Farm Credit Act; 12 U.S.C. 2250, 2252, 3025.

**§ 607.1 Purpose and scope.**

The regulations in part 607 implement the provisions of section 5.15 of the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.* (Act) relating to Farm Credit Administration (FCA) assessments. The regulations prescribe the procedures for the equitable apportionment of FCA annual administrative expenses and necessary reserves among Farm Credit System (System) institutions. Pursuant to section 5.15(a) of the Act, the regulations also provide for the separate assessment of the FCA's costs of supervising and examining the Federal Agricultural Mortgage Corporation (FAMC). The regulations further provide for the reimbursement of expenses incurred in performing statutorily required examinations of non-System entities.

**§ 607.2 Definitions.**

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

(a) *Assessment* means the annual amount to be paid by each System institution to the Farm Credit Administration in accordance with section 5.15 of the Act.

(b) *Average risk-adjusted asset base* means the average of the risk-adjusted asset base (as determined in accordance with § 615.5210(e) of this chapter) of banks, associations, and designated other System entities, calculated as follows:

(1) For banks, associations, and designed other System entities with four quarters of risk-adjusted assets as of June 30 each year, the sum of the average daily risk-adjusted assets as of the last day of the quarter as reported on each quarterly Call Report Schedule RC-G to the FCA for the most recent four quarters immediately preceding each September 15, divided by four;

(2) Except as provided in paragraphs (b)(3) and (b)(4) of this section, for banks, associations, and designated other System entities with less than four quarters of risk-adjusted assets as of June 30 of each year, the sum of the average daily risk-adjusted assets as of the last day of the quarter reported on each quarterly Call Report Schedule RC-G to the FCA for the quarters in which it was in existence immediately preceding September 15, divided by the number of quarters for which the Call Report Schedule RC-G was received;

(3) For banks, associations, and designated other System entities that were formed through mergers, consolidations, or transfers of direct lending authority and have less than four quarters of risk-adjusted assets as of June 30, the sum of the average daily risk-adjusted assets as the last day of the quarter for the most recent four quarters immediately preceding September 15 as reported on each quarterly Call Report Schedule RC-G filed by the newly chartered institution and the institutions that were merged or consolidated or that received direct lending authority, divided by four;

(4) For banks, associations, and designated other System entities chartered during the period July 1 through September 30 of each year that were not formed by the merger or consolidation of existing System institutions or the transfer of direct lending authority from another System institution, the total of the average daily risk-adjusted assets as of the last day of the quarter as reported on Call Report Schedule RC-G for the quarter ending September 30.

(c) *Composite CAMEL* rating means the composite numerical assessment of the financial condition of an institution assigned to the institution by the FCA based on its most recent examination of the institution. "CAMEL" is an acronym for capital, asset quality, management, earnings, and liquidity. The CAMEL factors are generally considered to be important indicators of an institution's financial health. Institutions are rated on each of the factors during an examination. CAMEL ratings range from 1-5, with a lower number indicating better financial condition than a higher number.

(d) *Delinquent amount* means an amount owed to the FCA that has not been paid by the date specified in the FCA's Notice of Assessment or billing.

(e) *Designated other System entities* means other System entities designated by the FCA in § 607.3(c) to be assessed on the same basis as banks and associations under § 607.3

(f) *Direct expenses* means the expenses of the FCA attributable to the performance of examinations.

(g) *Indirect expenses* means all FCA expenses that are not attributable to the performance of examination.

(h) *Non-System entities* means the National Consumer Cooperative Bank, the National Cooperative Bank Development Corporation, and any other entity that is required to be examined, supervised, or otherwise regulated by the FCA that is not a System institution.

(i) *Notice of Assessment* means a written notice to each System institution showing the total amount assessed and owing, the fiscal year covered by the assessment, the amounts of installment payments, and the due dates for such payments. For banks, associations, and designated other System entities, the Notice of Assessment shall also include an individualized assessment table showing the assessment under § 607.3(b)(2) where applicable.

(j) *Other System entities* means any service corporation chartered under section 4.25 of the Act, the Farm Credit System Financial Assistance Corporation, FAMC, the Federal Farm Credit Banks Funding Corporation, the Farm Credit Finance Corporation of Puerto Rico, and any other entity statutorily designated as a System institution that is not a bank or association.

(k) *System institutions* means banks, associations, and other System entities.

**§ 607.3 Assessment of banks, associations, and designated other System entities.**

(a) Banks, associations, and other System entities designated in paragraph (c) of this section will be assessed annually pursuant to this section for funds to cover a portion of the FCA's administrative expenses and necessary reserves. The total amount of the annual assessment of banks, associations, and designated other System entities shall be based on the FCA budget for each fiscal year plus a necessary reserve amount, excluding amounts to be assessed against other System entities and reimbursements received from non-System entities.

(b) The assessment shall be apportioned among the banks, associations, and designated other System entities as follows:

(1) Thirty (30) percent of the assessment under this section shall be apportioned to each bank, association, and designated other System entity on the basis of each institution's pro rata share of the total average risk-adjusted asset base.

(2) Seventy (70) percent of the assessment under this section shall be apportioned to each bank, association, and designated other System entity based upon the amounts of the institution's average risk-adjusted assets that fall within the graduated risk-adjusted asset tiers contained in the following table. An institution's total assessment under this paragraph is the sum of the amounts assessed for risk-adjusted assets falling into each applicable tier, subject to adjustment for its CAMEL rating as required in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. The same assessment rate (designated as X 1 or a declining percentage of X 1 in the following table) will be applied to each dollar value of risk-adjusted assets falling within each tier, increased where applicable, by the amounts prescribed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. The actual assessment rate under this paragraph shall be determined annually based on relative average risk-adjusted asset bases, the CAMEL ratings of individual institutions, and the FCA budget as adjusted pursuant to paragraph (a) of this section, but the relationship between the rates applied to each tier shall remain constant as set forth in the following table.

|  |  |
| --- | --- |
| Average risk-adjusted asset size range (in millions) | Assessment rate |
| Over |  To  |
| $0 | $25 |  X 1 |
| 25 | 50 |  .85X 1  |
| 50 | 100 |  .75X 1  |
| 100 | 500 | .60X 1  |
| 500 | 1,000 | .50X 1  |
| 1,000 | 7,000 | .35X 1  |
| 7,000 | 10,000 | .20X 1  |
| 10,000 | -- | .10X 1  |

Example: XYZ association has a CAMEL rating of 2 and average risk-adjusted assets of $500.4 million. The value of X 1 has been determined to be .000917, based on an FCA budget of $40.29 million.

|  |
| --- |
|  X 1 =.000917 therefore $ 25,000,000 X .0917%=$ 22,925  |
| .85X 1 =.000780 therefore $ 25,000,000 X .0780%=$ 19,500  |
| .75X 1 =.000688 therefore $ 50,000,000 X .0688%=$ 34,400  |
| .60X 1 =.000550 therefore $ 400,000,000 X .0550%=$ 220,000  |
| .50X 1 =.000458 therefore $ 400,000 X .0458%=$ 183  |
|  ---------------  |
|  Total Assessment under § 607.3(b)(2)=$297,008 |

 (i) If the FCA assigns a bank, association, or designated other System entity a composite CAMEL rating of 3 following its most recent examination of the institution prior to the date of assessment, the assessment provided for in paragraph (b)(2) of this section shall be increased by 20 percent.

(ii) If the FCA assigns a bank, association, or designated other System entity a composite CAMEL rating of 4 or 5 following its most recent examination of the institution prior to the date of assessment, the assessment provided for in paragraph (b)(2) of this section shall be increased by 40 percent.

(iii) Banks, associations, and designated other System entities that were formed through mergers or consolidations and have not been examined before their initial assessment under this section shall be deemed to have a composite CAMEL rating equivalent to the highest composite CAMEL rating assigned to the merged or consolidated institutions in the FCA's most recent examination of the individual institutions prior to the date of merger or consolidation. Newly chartered institutions not formed through mergers or consolidations that have not been examined before their initial assessment under this section shall be deemed to have a composite CAMEL rating of 2.

(3) Each bank, association, and designated other System entity shall pay a minimum assessment of $20,000 regardless of the result of the application of the assessment formula established by paragraphs (b)(1) and (b)(2) of this section. If such a minimum assessment is apportioned to an institution, that institution's average risk-adjusted asset base shall be deducted from the total average risk-adjusted asset base, and $20,000 shall be deducted from the total assessment amount for purposes of determining the assessments of banks, associations, and designated other System entities paying more than the $20,000 minimum assessment.

(c) Other System entitles designated to be assessed in accordance with this section are:

The Farm Credit Services Leasing Corporation.

(d) Assessments may be adjusted periodically to reflect:

(1) Changes in the FCA budget and necessary reserves; and

(2) Any overpayment or underpayment by a bank, association, or designated other System entity in the prior fiscal year.

**§ 607.4 Assessment of other System entities.**

(a)(1) Unless otherwise designated to be assessed under § 607.3 and with the exception of FAMC as provided in paragraph (b) of this section, other System entities will be assessed for estimated direct expenses plus an allocated portion of FCA indirect expenses and an amount for necessary reserves. The estimate for direct expenses shall take into account the direct expenses incurred in the most recent examination of the entity preceding each September 15 and expected increases or decreases in examination work for the next fiscal year. A proportional amount of FCA indirect expenses will be allocated to each entity based on the estimated direct expenses related to the particular entity as a percentage of the total budgeted direct expenses of the agency (excluding direct expenses under paragraph (b) of this section) for the fiscal year covered by the assessment.

(2) Assessments of other System entities under paragraph (a)(1) of this section may be adjusted periodically to reflect:

(i) Changes in the FCA budget and necessary reserves; and

(ii) Any overpayment or underpayment by such other System entity in the prior fiscal year.

(b) *Assessment of Federal Agricultural Mortgage Corporation.* The FCA shall assess FAMC for the estimated cost of FCA's regulation, supervision, and examination of FAMC. FAMC's assessment may be adjusted periodically to reflect changes in the FCA budget and to reconcile differences between FAMC's assessment and FCA's actual expenditures for regulation of FAMC in the prior fiscal year.

**§ 607.5 Notice of assessment.**

(a) Except as provided in paragraph (b) of this section, prior to September 15 of each year, the FCA shall determine the amount of assessment to be collected from each System institution for the next fiscal year under §§ 607.3 and 607.4 and shall provide each System institution with a Notice of Assessment. The total amount assessed each System institution in the Notice of Assessment shall be an obligation of each institution on October 1 of each fiscal year. The total amount assessed each System institution shall be payable not less often than quarterly in equal installments during each fiscal year, subject to adjustment pursuant to §§ 607.3(d), 607.4(a)(2), 607.4(b), and 607.10.

(b) For banks, associations and designated other System entities chartered during the period July 1 through September 30 of each year, the FCA shall, prior to December 15, determined the amount of assessment to be collected from each such institution for the remainder of the fiscal year and provide the institution with a Notice of Assessment. The total amount of the assessment becomes an obligation of the institution on January 1 and shall be payable in equal installments, subject to adjustment pursuant to §§ 607.3(d) and 607.10, not less often than quarterly for the remainder of the fiscal year. The first installment shall be due on January 1. This paragraph shall not apply to banks, associations, and designated other System entities formed by merger, consolidation, or transfer of direct lending authority.

(c) In the event of the proposed cancellation of the charter of a System institution, the unpaid installments of the total amount of the institution's assessment shall be provided for prior to the cancellation of the charter.

**§ 607.6 Payment of assessment.**

(a) System institutions shall pay the amounts due as scheduled in the FCA Notice of Assessment. Payment shall be made by electronic funds transfer (EFT) for credit to the FCA's account in the Department of the Treasury, by check to the FCA for deposit, or by such other means as the FCA may authorize.

(b) Payments made by EFT that are not received by the close of business on the due date shall be considered delinquent in accordance with § 607.7.

(c) Payments made by check that are not received by the FCA before the close of business on the third workday preceding the due date shall be considered delinquent in accordance with § 607.7.

**§ 607.7 Late-payment charges on assessments.**

(a) If any portion of a scheduled installment of an institution's total assessment or the reimbursement billed to a non-System entity is not paid by the due date, the overdue amount shall be considered delinquent.

(b) Delinquent amounts shall be charged late-payment interest at the United States Treasury Department's current value of funds rate published in the **Federal Register**. Late payment interest shall be expressed as an annual rate of interest and shall accrue on a daily basis starting on the due date of the delinquent amount and continuing through the date payment is received by the FCA.

(c) The FCA shall waive the collection of interest on the delinquent amounts if such amounts are paid within 30 days of the date interest begins to accrue. The FCA may waive interest due on delinquent amounts upon finding no fault with the performance of the remitter.

(d) The FCA shall charge an amount necessary to cover the administrative costs incurred as a result of collection of any delinquent amount.

(e) The FCA shall charge a penalty of 6 percent per annum on any portion of a delinquent amount that is more than 90 days past due. Such penalty shall accrue from the date the amount became delinquent.

**§ 607.8 Reimbursements for services to non-System entities.**

Non-System entities shall be assessed for direct expenses plus an allocated portion of FCA indirect expenses. The FCA shall record the direct expenses incurred in the performance of an examination of a non-system entity and the rendering of required reports of examination. The FCA shall add a portion of its indirect expenses to the direct expenses for an examination. Indirect expenses shall be allocated based on the ratio of direct expenses incurred for each such examination to the total budgeted examination expenses of the FCA.

**§ 607.9 Reimbursable billings.**

The FCA shall bill the amounts due for services to non-System entities each year subsequent to the issuance of their respective Reports of Examination. Amounts billed are due in full within 30 days from the date billed. If the billed amount or any portion thereof remains unpaid at close of business on the due date, such amount or portion shall be considered delinquent in accordance with § 607.7.

**§ 607.10 Adjustments for overpayment or underpayment of assessments.**

Where adjustments for overpayment or underpayment of assessments are made pursuant to §§ 607.3(d), 607.4(a)(2), and 607.4(b), or, if at the end of the fiscal year, the amount allocated to System institutions is different from the amount collected, credit for overpayments and charges for underpayments shall be applied to the next applicable assessment payment due during the current or subsequent fiscal year. Where such adjustments are made, the FCA shall provide the institution with a statement of adjustment at least 15 days prior to the date when the institution's next assessment payment is due. Adjustments in assessments shall be made in principal amount only. Overdue amounts under § 607.7 are not underpayments for assessment adjustment purposes.

**§ 607.11 Statement of assessments and expenses.**

By January 15 of each calendar year, the FCA shall provide each assessed System institution with a statement of assessments and expenses for the preceding fiscal year showing total assessments and other income received as applied to expenses incurred by major budget category and amounts set aside for necessary reserves.

**PART 618 -- GENERAL PROVISIONS**

1. The authority citation for part 618 is revised to read as follows:

**Authority:** Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

**Subpart F -- Miscellaneous Provisions**

**§ 618.8230 [Removed and Reserved]**

2. Subpart F is amended by removing and reserving § 618.8230.

**Dated:** October 7, 1992.

**Curtis M. Anderson,**

Secretary, Farm Credit Administration Board.

[FR Doc. 92-24792 Filed 10-14-92; 8:45 am]

BILLING CODE 6705-01-M