

Subpart H—Capital Adequacy

SOURCE: 53 FR 39247, Oct. 6, 1988, unless otherwise noted.

§ 615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of total capital, core surplus, total surplus, and unallocated surplus needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum capital standards specified in this part are not meant to be adopted as the optimal capital level in the institution's capital adequacy plan. Rather, the standards are intended to serve as minimum levels of capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) Each Board of Directors shall establish, adopt, and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440 of this chapter. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital and surplus standards. The plan shall address any projected dividends, patronage distribution, equity requirements, or other action that may decrease the institution's capital or the components thereof for which minimum amounts are required by this part. The plan shall set forth the circumstances in which retirements or revolvments of stock or equities may occur. If the plan provides for retirement or revolvment of equities included in core surplus, in connection with a loan default or the death of a former borrower, the plan must require the institution to make a prior determination that such retirement or revolvment is in the best interest of the institution, and also require the institution to charge off an amount of the indebtedness on the loan equal to the amount of the equities that are retired or canceled. In addition to factors that must be considered in meeting the minimum standards, the board of directors shall also con-

sider at least the following factors in developing the capital adequacy plan:

- (1) Capability of management;
- (2) Quality of operating policies, procedures, and internal controls;
- (3) Quality and quantity of earnings;
- (4) Asset quality and the adequacy of the allowance for losses to absorb potential loss within the loan and lease portfolios;
- (5) Sufficiency of liquid funds;
- (6) Needs of an institution's customer base; and
- (7) Any other risk-oriented activities, such as funding and interest rate risks, potential obligations under joint and several liability, contingent and off-balance-sheet liabilities or other conditions warranting additional capital.

[53 FR 39247, Oct. 6, 1988, as amended at 62 FR 4446, Jan. 30, 1997]

§ 615.5201 Definitions.

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

(a) *Allocated investment* means earnings allocated but not paid in cash by a System bank to an association or other recipient.

(b) *Commitment* means any arrangement that legally obligates an institution to purchase loans or securities, to participate in loans or leases, to extend credit in the form of loans or leases, to pay the obligation of another, to provide overdraft, revolving credit or underwriting facilities, or to participate in similar transactions.

(c) *Credit conversion factor* means that number by which an off-balance-sheet item shall be multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

(d) *Deferred-tax assets that are dependent on future income or future events* means:

- (1) Deferred-tax assets arising from deductible temporary differences dependent upon future income that exceed the amount of taxes previously paid that could be recovered through loss carrybacks if existing temporary differences (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse;

Farm Credit Administration

§615.5201

(2) Deferred-tax assets dependent upon future income arising from operating loss and tax carryforwards; or

(3) Deferred-tax assets arising from temporary differences that could be recovered if existing temporary differences that are dependent upon other future events (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse.

(e) *Direct lender institution* means an institution that extends credit in the form of loans or leases to eligible borrowers in its own right and carries such loan or lease assets on its books.

(f) *Government agency* means an agency of the United States Government whose obligations are explicitly guaranteed by the United States Government or their successors.

(g) *Government-sponsored agency* means agencies or instrumentalities chartered by the United States Congress to serve a public purpose whose debt obligations are not explicitly guaranteed by the United States Government.

(h) *Institution* means a Farm Credit bank, Federal land bank association, Federal land credit association, production credit association, agricultural credit association, Farm Credit Leasing Corporation, bank for cooperatives, agricultural credit bank, and their successors.

(i) *Nonagreeing association* means an association that does not have an allotment agreement in effect with a Farm Credit Bank or agricultural credit bank pursuant to §615.5210(e).

(j) *OECD* means the group of countries that are full members of the Organization for Economic Cooperation and Development, regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund's General Arrangement to Borrow, excluding any country that has rescheduled its external sovereign debt within the previous 5 years.

(k) *Performance-based standby letter of credit* means any letter of credit or similar arrangement that represents an irrevocable obligation to be beneficiary on the part of the issuer to make payment on any default by the account

party in the performance of a non-financial or commercial obligation.

(1) *Permanent capital* means—

(1) Current year retained earnings;

(2) Allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(3) All surplus;

(4) Stock issued by a System institution, except—

(i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder;

(ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk;

(iii) Farm Credit Bank equities required to be purchased by Federal land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(iv) Capital subject to revolvement, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted;

(5) Term preferred stock with an original maturity of at least 5 years and on which, if cumulative, the board of directors has the option to defer dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions);

(6) Payments to, or obligations to pay, the Farm Credit System Financial

§ 615.5205

Assistance Corporation to the extent permitted by section 6.26(c)(5)(G) of the Act and § 615.5210(d); and

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

(8) Any other debt or equity instruments or other accounts the FCA has determined are appropriate to be considered permanent capital. The FCA may permit one or more institutions to include all or a portion of such instrument, entry, or account as permanent capital, permanently or on a temporary basis, for purposes of this part.

(m) *Qualifying bilateral netting contract* means a bilateral netting contract that meets at least the following conditions:

(1) The contract is in writing;

(2) The contract is not subject to a walkaway clause, defined as a provision that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract;

(3) The contract creates a single obligation either to pay or to receive the net amount of the sum of positive and negative mark-to-market values for all derivative contracts subject to the qualifying bilateral netting contract;

(4) The institution receives a legal opinion that represents, to a high degree of certainty, that in the event of legal challenge the relevant court and administrative authorities would find the institution's exposure to be the net amount;

(5) The institution establishes a procedure to monitor relevant law and to ensure that the contracts continue to satisfy the requirements of this section; and

(6) The institution maintains in its files adequate documentation to support the netting of a derivatives contract.

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

12 CFR Ch. VI (1-1-04 Edition)

the basis of risk in accordance with § 615.5210(f).

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

(1) To repay money borrowed by or advanced to or for the account of the account party; or

(2) To make payment on account of any indebtedness undertaken by the account party, in the event the account party fails to fulfill its obligation to the beneficiary.

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

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

[53 FR 39247, Oct. 6, 1988, as amended at 56 FR 2675, Jan. 24, 1991; 59 FR 37404, July 22, 1994; 62 FR 4446, Jan. 30, 1997; 63 FR 39225, July 22, 1998; 68 FR 18534, Apr. 16, 2003]

§ 615.5205 Minimum permanent capital standards.

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

[62 FR 4446, Jan. 30, 1997]

§ 615.5210 Computation of the permanent capital ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles except that the obligations of the Farm Credit System Financial Assistance Corporation issued to repay banks in connection with the capital preservation and loss-sharing agreements described in section 6.9(e)(1) of the Act shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) The institution's asset base and permanent capital shall be computed using average daily balances for the most recent 3 months.