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(d) When the debt of a holder of the equities of a Farm Credit Bank or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such equities qualify as eligible borrower stock or are retired solely to permit a Federal land bank association to retire eligible borrower stock under §615.5280(a), they shall be retired at par. All other equities shall be retired at book value not to exceed par.

(e) Any retirements made under this section by a Federal land bank association shall be made only upon the specific approval of, or in accordance with, approval procedures issued by the association's funding bank.

(f) Prior to making any retirement pursuant to this section, except retirements pursuant to paragraphs (c) and (d) of this section, the institution shall provide the borrower with written notice of the following matters:

(1) A statement that the institution has declared the borrower's loan to be in default;

(2) A statement that the institution will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the institution;

(4) A statement of the amount of the outstanding debt that will be owed to the institution after the retirement of the borrower's equities; and

(5) The date on which the institution will retire the equities of the borrower.

(g) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

(h) The requirements of this section may be satisfied by notices given pursuant to §§614.4516, 614.4518, and 614.4519 of title 12 of the Code of Federal Regu-

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lations that contain the information required by this section.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989, as amended at 61 FR 67187, Dec. 20, 1996; 62 FR 13213, Mar. 19, 1997]

§ 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under §614.4517, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under §614.4517, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(c) Notwithstanding paragraphs (a) and (b) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

[53 FR 35457, Sept. 14, 1988, as amended at 61 FR 67188, Dec. 20, 1996]

Subpart K—Surplus and Collateral Requirements

SOURCE: 62 FR 4447, Jan. 30, 1997, unless otherwise noted.

§ 615.5301 Definitions.

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

(a) The terms *deferred-tax assets that are dependent on future income or future events, institution, permanent capital,*

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and *total capital* shall have the meanings set forth in §615.5201.

(b) *Core surplus.* (1) Core surplus means:

(i) Undistributed earnings/ unallocated surplus less, for associations only, an amount equal to the net investment in the bank;

(ii) Nonqualified allocated equities (including stock) that are not distributed according to an established plan or practice, *provided that*, in the event that a nonqualified patronage allocation is distributed, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining nonqualified allocations that were allocated in the same year will be excluded from core surplus.

(iii) Perpetual common or noncumulative perpetual preferred stock (other than allocated stock) that is not retired according to an established plan or practice, *provided that*, in the event that stock held by a borrower is retired, other than as required by section 4.14B of the Act or in connection with a loan default to the extent provided for in the institution's capital plan, the remaining perpetual stock of the same class or series shall be excluded from core surplus;

(iv) A capital instrument or a particular balance sheet entry or account that the Farm Credit Administration has determined to be the functional equivalent of a component of core surplus. The Farm Credit Administration may permit an institution to include all or a portion of such instrument, entry, or account as core surplus, permanently or on a temporary basis, for purposes of this subpart.

(2) For associations only, other allocated equities may also be included in the core surplus ratio to the extent permitted by §615.5330(b) if the following conditions are met:

(i) The allocated equities are includible in total surplus; and

(ii) The allocated equities, if subject to a plan or practice of revolvment or retirement, are not scheduled or intended to be revolved or retired during the next 3 years, provided that, in the

event that such allocated equities included in core surplus are retired, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining such allocated equities that were allocated in the same year will be excluded from core surplus.

(3) The deductions required to be made by an institution in the computation of its permanent capital pursuant to §615.5210(e) (6), (7), (9), and (11) shall also be made in the computation of its core surplus. Deductions required by §615.5210(e)(1) shall also be made to the extent that they do not duplicate deductions calculated pursuant to this section and required by §615.5330(b)(2).

(4) Equities issued by System institutions and held by other System institutions shall not be included in the core surplus of the issuing institution or of the holder, unless approved pursuant to paragraph (b)(1)(iv) of this section, except that equities held in connection with a loan participation shall not be excluded by the holder. This paragraph shall not apply to investments by an association in its affiliated bank, which are governed by §615.5301(b)(1)(i).

(5) The core surplus of an institution shall exclude the net effect of all transactions covered by the definition of "accumulated other comprehensive income" contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

(6) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from core surplus.

(c) *Net collateral* means the value of a bank's collateral as defined by §615.5050 (except that eligible investments as described in §615.5140 are to be valued at their amortized cost), less an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital by the bank.

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(d) *Net collateral ratio* means a bank's net collateral, divided by the bank's total liabilities.

(e) *Net investment in the bank* means the total investment by an association in its affiliated bank, less reciprocal investments and investments resulting from a loan originating/service agency relationship, including participations.

(f) *Nonqualified allocated equities* means allocations of earnings designated to the institution's members that are not deducted from the gross taxable income of the allocating institution at the time of allocation.

(g) *Perpetual stock or equity* means stock or equity not having a maturity date, not redeemable at the option of the holder, and having no other provisions that will require the future redemption of the issue.

(h) *Qualified allocated equities* means allocations of earnings that are deducted from the gross taxable income of the allocating institution and designated to the institution's members.

(i) *Total surplus* means:

(1) Undistributed earnings/unallocated surplus;

(2) Allocated equities, including allocated surplus and stock, that are not subject to a plan or practice of revolvement or retirement of 5 years or less and are eligible to be included in permanent capital pursuant to § 615.5201(l)(4)(iv); and

(3) Common and perpetual preferred stock (other than allocated stock) that is not purchased or held as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring such stock;

(4) Term preferred stock that is not purchased or held as a condition of obtaining a loan, up to a maximum of 25 percent of the institution's permanent capital (as calculated after deductions required in the permanent capital ratio computation). The amount of includible term stock must be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument;

(5) The total surplus of an institution shall exclude the net effect of all transactions covered by the definition of "accumulated other comprehensive income" contained in the Statement of Financial Accounting Standards No.

130, as promulgated by the Financial Accounting Standards Board.

(6) A capital instrument or a particular balance sheet entry or account that the Farm Credit Administration has determined to be the functional equivalent of a component of total surplus. The Farm Credit Administration may permit one or more institutions to include all or a portion of such instrument, entry, or account as total surplus, permanently or on a temporary basis, for purposes of this subpart.

(7) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from total surplus.

(8) Any deductions made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) shall also be made in the computation of its total surplus.

(j) *Total liabilities* means liabilities valued in accordance with generally accepted accounting principles (GAAP), except that total liabilities shall exclude the following:

(1) As set forth in Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, as promulgated by the Financial Accounting Standards Board—

(i) Adjustments to the carrying amount of any liability designated as being hedged; and

(ii) Any derivative recognized as a liability that is designated as a hedging instrument.

(2) Term preferred stock to the extent such stock is included as total surplus in the computation of the bank's total surplus ratio pursuant to § 615.5301(i).

[62 FR 4447, Jan. 30, 1997; 62 FR 19219, Apr. 21, 1997; 63 FR 39228, July 22, 1998; 68 FR 18534, Apr. 16, 2003]

§ 615.5330 Minimum surplus ratios.

(a) *Total surplus*. (1) Each institution shall achieve and at all times maintain a ratio of a least 7 percent of total surplus to the risk-adjusted asset base.