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on the obligation over the market price for the obligation on October 21, 1986.

(c) An institution that defers any expenses associated with actions taken in accordance with this section shall amortize such expenses over a period not to exceed 20 years using straight-line amortization. The unamortized portion of debt-related costs that are deferred or are eligible to be deferred shall not be considered as capital of the institution.

§ 624.103 Deferral of the provisions for loan losses.

An institution is authorized during the period July 1, 1986, through December 31, 1992, to capitalize the amount of its provision for loan losses made on an annual basis in excess of 1/2 of 1 percent of loans outstanding. An institution that defers a portion of its provision for loan losses in accordance with this section shall amortize such amount over a period to not exceed 20 years, using straight-line amortization. Institutions using RAP to defer their provisions for loan losses shall maintain an allowance for loan losses determined in accordance with GAAP.

§ 624.104 Interest rate evaluation.

An institution may take into consideration the use of RAP, among other factors, for purposes of evaluating the interest rates charged on loans. Such other factors include the institution's cost of funds, overhead, expected losses, margin to provide for adequate capital, return to stockholders, and any other relevant factors. In no event shall such an institution charge a rate of interest which is less than the competitive interest rates charged by other lending institutions in the same area, for a loan with similar terms, to a borrower of equivalent creditworthiness and access to alternative credit.

§ 624.105 Financial reporting and disclosure.

Each institution that uses RAP in accordance with the provisions of this part shall prepare and issue its financial statements to stockholders in accordance with part 620 of this chapter. In addition, each such institution shall disclose clearly in the management commentary to its financial state-

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ments the purpose and use of the regulatory accounting practices adopted by the institution and shall reconcile the differences between the application of GAAP and RAP.

PART 625—APPLICATION FOR AWARD OF FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

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AUTHORITY: 5 U.S.C. 504, 12 U.S.C. 2252.

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Subpart A—General Provisions

§ 625.1 Purpose.

These rules implement the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (designated by the EAJA as "adversary adjudications") before Federal agencies. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially

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justified or special circumstances make an award unjust. The rules in this part explain how the EAJA applies to Farm Credit Administration (FCA) proceedings. The rules describe the parties eligible for awards, how such parties may apply for awards, and the procedures and standards that govern FCA consideration of applications.

§ 625.2 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the FCA either on its own behalf or in connection with any other agency of the United States that participates in or in any way is a part of the adversary adjudication. Adversary adjudications are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the FCA or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding; and

(2) Enforcement proceedings under 12 U.S.C. 2261-2273.

(b) The failure of the FCA to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes that the proceeding is covered by the EAJA; whether the proceeding is covered shall then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered and excluded from coverage by the EAJA, any award made will include only fees and expenses related to covered issues.

(d) Proceedings under this part may be conducted by the FCA Board (Board) or by the presiding officer (referred to as the "adjudicative officer" in the EAJA), as defined in §622.2(f) of this chapter. If the Board conducts proceedings, reference to the "presiding officer" in this part shall mean the Board, in applicable context. Where the Board presides, the recommended decision under §625.26 of this part will be omitted and the Board will make a final decision on the application in accordance with §625.27 of this part.

(e) If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 625.3 Eligibility of applicants.

(a) To be eligible for an award under the EAJA, an applicant must be a prevailing party named or admitted to the adversary adjudication for which an award is sought. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of \$2 million or less;

(2) The sole owner of an unincorporated business who has both a net worth of \$7 million or less (including personal and business interests), and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of \$7 million or less and 500 or fewer employees.

(c) For eligibility purposes, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for that applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility unless the presiding officer determines that aggregation would be unjust and contrary to the purposes of the EAJA in light of the