

## Farm Credit Administration

## § 615.5208

limitations, and restrictions described in § 628.22(a)(3) of this chapter.

(1) [Reserved]

[81 FR 49774, July 28, 2016]

### § 615.5208 Allotment of allocated investments.

(a) The following conditions apply to agreements that a System bank enters into with an affiliated association pursuant to § 615.5207(b)(2):

(1) The agreement must be for a term of 1 year or longer.

(2) The agreement must be entered into on or before its effective date.

(3) The agreement may be amended according to its terms, but no more frequently than annually except in the event that a party to the agreement is merged or reorganized.

(4) On or before the effective date of the agreement, a certified copy of the agreement, and any amendments thereto, must be sent to the field office of the Farm Credit Administration responsible for examining the System institution. A copy must also be sent within 30 calendar days of adoption to the bank's other affiliated associations.

(5) Unless the parties otherwise agree, if the System bank and the association have not entered into a new agreement on or before the expiration of an existing agreement, the existing agreement will automatically be extended for another 12 months, unless either party notifies the Farm Credit Administration in writing of its objection to the extension prior to the expiration of the existing agreement.

(b) In the absence of an agreement between a System bank and one or more associations, or in the event that an agreement expires and at least one party has timely objected to the continuation of the terms of its agreement, the following formula applies with respect to the allocated investments held by those associations with which there is no agreement (nonagreeing associations), and does not apply to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(1) The allotment formula must be calculated annually.

(2) The permanent capital ratio of the System bank must be computed as of the date that the existing agreement terminates, using a 3-month average daily balance, excluding the allocated investment from nonagreeing associations but including any allocated investments of agreeing associations that are allotted to the bank under applicable allocation agreements. The permanent capital ratio of each nonagreeing association must be computed as of the same date using a 3-month average daily balance, and must be computed excluding its allocated investment in the bank.

(3) If the permanent capital ratio of the System bank calculated in accordance with paragraph (b)(2) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with paragraph (b)(2) of this section is 7 percent or above must be allotted 50 percent to the bank and 50 percent to the association.

(4) If the permanent capital ratio of the System bank calculated in accordance with paragraph (b)(2) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose capital ratio is below 7 percent must be allotted to the association until the association's capital ratio reaches 7 percent or until all of the investment is allotted to the association, whichever occurs first. Any remaining unallotted allocated investment must be allotted 50 percent to the bank and 50 percent to the association.

(5) If the permanent capital ratio of the System bank calculated in accordance with paragraph (b)(2) of this section is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital ratio of 7 percent must be determined, and an amount of the allocated investment of each nonagreeing association must be allotted to the System bank, as follows:

(i) If the total of the allocated investments of all nonagreeing associations is greater than the additional capital needed by the bank, the allocated investment of each nonagreeing association must be multiplied by a fraction

## §§ 615.5209–615.5212

whose numerator is the amount of capital needed by the bank and whose denominator is the total amount of allocated investments of the nonagreeing associations, and such amount must be allotted to the bank. Next, if the permanent capital ratio of any nonagreeing association is less than 7 percent, a sufficient amount of unallotted allocated investment must then be allotted to each nonagreeing association, as necessary, to increase its permanent capital ratio to 7 percent, or until all such remaining investment is allotted to the association, whichever occurs first. Any unallotted allocated investment still remaining must be allotted 50 percent to the bank and 50 percent to the nonagreeing association.

(ii) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the remaining allocated investments of the nonagreeing associations must be allotted to the bank.

[81 FR 49774, July 28, 2016]

## §§ 615.5209–615.5212 [Reserved]

### § 615.5215 Distribution of earnings.

The boards of directors of System institutions may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities except retirements pursuant to §§615.5280 and 615.5290 if, after or due to the action, the permanent capital of the institution would fail to meet the minimum permanent capital adequacy standard established under §615.5205 for that period. This limitation shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital at the issuing institution. Any System institution subject to Federal income tax may pay patronage refunds partially in cash if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of

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the refund paid qualifies as permanent capital.

[53 FR 39247, Oct. 6, 1988, as amended at 53 FR 40046, Oct. 13, 1988]

## § 615.5216 [Reserved]

### Subpart I—Issuance of Equities

SOURCE: 53 FR 40046, Oct. 13, 1988, unless otherwise noted.

### § 615.5220 Capitalization bylaws.

(a) The board of directors of each System bank and association shall, pursuant to section 4.3A of the Farm Credit Act of 1971 (Act), adopt capitalization bylaws, subject to the approval of its voting shareholders, that set forth:

(1) Classes of equities and the manner in which they shall be issued, transferred, converted and retired;

(2) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(3) The number of shares and par value of equities authorized to be issued for each class of equities. However, the bylaws need not state a number or value limit for these equities:

(i) Equities that are required to be purchased as a condition of obtaining a loan, lease, or related service.

(ii) Non-voting stock resulting from the conversion of voting stock due to repayment of a loan.

(iii) Non-voting equities that are issued to an association's funding bank in conjunction with any agreement for a transfer of capital between the association and the bank.

(iv) Equities resulting from the distribution of earnings.

(4) For Farm Credit Banks, agricultural credit banks (with respect to loans other than to cooperatives), and associations, the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement) that will be required to be purchased as a condition for obtaining a loan, which amount shall be not less