

## Farm Credit Administration

## § 615.5290

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, Federal land credit association or agricultural credit association is in default, such institution may, but shall not be required to, retire at book value not to exceed par all or part of such equities, other than eligible borrower stock as defined in § 615.5260(a)(1), owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(c) When the debt of a holder of equities or guaranty fund certificates issued by a bank for cooperatives or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities qualify or guaranty fund investments owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such investments qualify as eligible borrower stock, it shall be retired at par, as defined in § 615.5260(a)(3). All other investments shall be retired at a rate determined by the institution to reflect its present value on the date of retirement.

(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 §§ 617.7405, 617.7410, 617.7420, and 617.7425 of this chapter 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; 69 FR 10907, Mar. 9, 2004]

### **§ 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 § 617.7415, 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 § 617.7415, any of the principal outstanding on a loan made

## § 615.5301

## 12 CFR Ch. VI (1–1–05 Edition)

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; 69 FR 10907, Mar. 9, 2004]

### 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*, 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 includable 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