Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not "significant" under the order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 18, 2011.

Robert I. Cusick,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Effective May 25, 2011, appendix B to part 2641 is amended by revising the listing for the Department of Labor to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Labor

Components:
- Bureau of Labor Statistics.
- Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).
- Employment and Training Administration.
- Employment Standards Administration.
- Mine Safety and Health Administration.
- Occupational Safety and Health Administration.
- Office of Disability Employment Policy (effective January 30, 2003).
- Pension Benefit Guaranty Corporation (effective May 25, 2011).

* * * * *

[FR Doc. 2011–12798 Filed 5–23–11; 8:45 am]

BILLING CODE 6345–03–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AC62

Loan Policies and Operations; Loan Purchases From FDIC

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or we) issues this final rule to amend its regulations on loan policies and operations. This final rule will permit Farm Credit System (System or FCS) institutions with direct lending authority to purchase from the Federal Deposit Insurance Corporation (FDIC) loans to farmers, ranchers, producers or harvesters of aquatic products and cooperatives that meet eligibility and scope of financing requirements. This will allow the System to provide liquidity and a stable source of funding and credit for borrowers of eligible agricultural loans in rural areas affected by the failure of their lending institution.

DATES: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or

Mary Alice Donner, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Background

Agriculture and rural sectors in the United States are adversely affected by bank failures and the resultant depressed local economies. Many commercial banks are active in agricultural and cooperative lending and, when they fail, farmers, ranchers, producers or harvesters of aquatic products, and cooperatives can be left seeking new lenders to meet their ongoing credit needs. Representatives from the FDIC, the System, and others have asked whether System institutions, directly or in partnership with other market participants, could provide a source of credit and liquidity to borrowers whose operations are financed with agricultural or cooperative loans affected by commercial bank failures.[1]

On May 18, 2010, the FCA published a Notice of Proposed Rulemaking (NPRM) to amend FCA regulations governing purchase and sale of interests in loans (75 FR 27660). The proposed rule would allow System institutions to purchase certain agricultural or cooperative loans of failed commercial

[1] System institutions are federally chartered, cooperatively owned corporations authorized under titles I, II, and III of the Farm Credit Act of 1971, as amended (Act), to make long-term mortgage and short- and intermediate-term production loans to farmers, ranchers, aquatic producers or harvesters, and, in the case of banks for cooperatives, to eligible cooperative associations. *See* 12 U.S.C. 2001 *et seq.*

banks from the FDIC. The FCA initially established a 60-day comment period but, on the request of the public, reopened the comment period for another 30 days (75 FR 56487, Sept. 16, 2010).[2]

After reviewing the comments, the FCA is adopting this final rule with two changes from the proposed rule. First, the FCA originally proposed a due diligence process in which a System institution would conduct a preliminary review of loans for eligibility prior to purchase, conduct a more thorough due diligence review after purchase, and divest ineligible loans. In response to the comments, FCA now modifies the final rule to eliminate the two-tiered due diligence process and to authorize only the purchase of agricultural loans that are eligible for System financing. Second, in response to comments concerning the need for the rule and those raising concerns on the safety and soundness of acquiring failed bank loans and out-of-territory loans, the final rule requires System institutions to provide information on loans made under authority of this section to FCA in the Reports of Condition and Performance.

II. Purpose of the Rule

FCA regulations currently provide that a System institution may not purchase an interest in a loan from a non-System institution except for the purpose of pooling and securitizing loans to sell to the Federal Agricultural Mortgage Corporation unless the interest is a participation interest.[3] As a result, System institutions are not currently authorized to buy loans from the FDIC. However, the Farm Credit Act of 1971, as amended (Act), does not prohibit System institutions from purchasing eligible loans from the FDIC. This rule will allow System institutions, directly or in partnership with other market participants, to purchase loans of failed banks from the FDIC acting as receiver or in any other capacity, when those loans meet eligibility and scope of financing requirements under titles I, II and III of the Act. System institutions will be able to provide a source of credit and liquidity to borrowers whose operations are financed with System eligible agricultural or cooperative loans affected by commercial bank failures.

III. Discussion of Comments

We received approximately 94 comment letters from commercial banks and their trade groups, the Farm Credit Council, a few System institutions and individuals. All non-System entities opposed the proposed rule while the System entities supported it. The Independent Community Bankers of America (ICBA) submitted a comment letter dated October 18, 2010, in which it discusses the results of a survey it conducted of over 2000 agricultural banks to determine their opinions on the proposed rule. We treat the ICBA's summary of the results of its survey and all discussion of it as a comment of the ICBA. We discuss all relevant comments to our proposed rule and our responses below. Those areas of the proposed rule not receiving comment are finalized as proposed unless otherwise discussed in this preamble.

A. Legal Authority for the Rule

Most of the non-System commenters objected that the rule gives System institutions authority beyond that granted by Congress and expands the Farm Credit mission beyond the intent of the Act. These commenters contend that the Act expressly identifies the limited authority of System institutions to buy, sell and participate in non-System loans. They opine that the FDIC is comparable to a non-System lender and that Federal law does not grant authority to System institutions to purchase loans from non-System lenders. They object that ineligible loans that are distressed would remain in the FCS and borrowers could get the benefit of borrower rights. They state that by providing restructuring to ineligible distressed loans and financial services to ineligible borrowers, the FCA contravenes the Act. A few commenters contend that the FCA is suggesting that all powers not denied by Congress are therefore granted by Congress, and that this is disingenuous because obviously Congress cannot foresee all potential lending activities.

Several System institutions commented that the FCA should authorize System institutions to purchase loans from FDIC successor banks, to purchase whole loans from non-System entities whenever it would benefit rural America, or that the FCA should allow the purchase of interests in all eligible loans.

FCA response. We do not agree that the proposed rule contravenes the Act. Section 1.5(5) of the Act gives Farm Credit Banks the authority to acquire, hold, dispose and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business,[4] and section 1.5(15) of the Act gives Farm Credit Banks authority to buy and sell obligations of, or insured by the United States or any agency thereof, and to make other investments as may be authorized under regulation issued by the FCA.[5] System institutions have the specific authority to make eligible loans, and to participate in eligible loans with non-System lenders. While these provisions of the Act do not specifically identify the System's authority to buy eligible loans from the FDIC, an eventuality not contemplated by Congress at the time, they do set forth the parameters of the System's authority upon which the FCA relies in this rule.

The Supreme Court has held that the business of banking is not limited to authorized activities specifically identified or enumerated in a statute.[6] System institutions may engage in those banking activities that are necessary to carry out their specific mission.[7] The System's mission is to make credit available to farmers and ranchers and their cooperatives, and to provide for an adequate and flexible flow of money into rural areas, and to meet current and future rural credit needs.[8] The System, as a Government-sponsored enterprise (GSE) for agricultural lending, should have a role in providing credit to farmers and ranchers and cooperatives and liquidity to rural areas, by purchasing eligible loans when the FDIC seeks buyers of agricultural or cooperative loans of a failed bank, consistent with the safe and sound operation of System business.

One non-System commenter contends that the FCA has, in the past, interpreted the Act to prohibit the proposed action, and that the FCA's authority to draft regulations does not authorize the FCA to go beyond the authority that limits the participation, selling and buying of loans with non-System banks.

The FCA has in the past determined that System institutions may not purchase whole loans from commercial banks. As the result of bank failures in rural areas, the FCA has for the first

[2] The reopened comment period for the proposed rule closed on October 18, 2010.

[3] 12 CFR 614.4325(b).

[4] *See* sections 2.2(5) and 2.12(5) of the Act for parallel authority with respect to Farm Credit associations.

[5] *See* sections 2.2(11) and 2.12(17) of the Act for parallel authority with respect to Farm Credit associations, and section 3.1(5) and (13)(A) of the Act for parallel authorities with respect to banks for cooperatives.

[6] *See NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Insurance Co.,* 513 U.S. 251 (1995).

[7] *REW Enterprises, Inc.* v. *Premier Bank, N.A.,* 49 F.3d 163 (5th Cir. 1995).

[8] *See* Preamble, Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.*

time considered the question of whether a System institution may purchase an otherwise eligible loan from the FDIC, a non-bank, non-lender, liquidator. It is unlikely that Congress ever considered this particular authority; however, Congress intended the System to provide liquidity to rural areas where necessary, and the FCA believes that allowing System institutions to bid on loans of failed banks—loans that the System could make outright and could participate in if originated by commercial banks—furthers that intent.

The FCA does not agree with the comments of the System institutions that it should broaden the reach of the rule.

B. Eligibility

Non-System commenters object to the provision of the proposed rule that would allow ineligible loans to remain within the System until divested. They object that the proposed rule would allow System institutions to offer financial services to borrowers who are not eligible under the Act and would offer financial remedies that are statutorily exclusive to those who meet eligibility requirements. They conclude that the proposed rule is contrary to statutory intent. Several commenters state that there should be an outright prohibition against purchasing ineligible loans, and that if the FCA cannot assure that loans purchased are within the legal requirements for System institutions, then FCA has no business making such a proposal. Many commenters object that the proposed rule does not set forth a required timeline for divesting illegal loans, and several commenters suggest that System institutions with ineligible loans should be subject to penalties.

One commenter states that the Act and existing regulations plainly identify loan eligibility, carefully keeping with the limited purposes Congress intended. This commenter states that under the proposed rule the ineligible loan, one not related to the mission of the Act and its congressionally defined mission or one in which the borrower does not acquire voting stock, would remain within the System until divested. Several commenters stated that the result of the rule would be that the System institutions would hold all manner of loans not related to farming and agriculture. One commenter states that if a loan is ineligible due to borrower status or loan type then that is the end of the analysis, and the FCS institution is not authorized to provide financial services. The commenter concludes that financing that is ineligible based on loan type or membership cannot be made eligible by being identified as distressed. The commenter further opines that a System institution cannot expeditiously divest of ineligible distressed loans in which it has provided restructuring financing, because the restructuring process takes time. One System institution commented that requiring a second due diligence review after loan purchase and divestiture will result in a substantial discount in the bid amount.

FCA response. We agree with commenters that System institutions do not have authority to purchase ineligible loans. Therefore, we are changing § 614.4325(b)(3)(i) of the final rule to require participating System institutions to determine eligibility of the loans or loan pools up front, before purchase. If a determination of eligibility cannot be made, then the System institution may not purchase the loan or loan pool under the rule. Because eligibility must be determined before purchasing the loan, there is no need to require divestiture of these loans except if the borrower does not elect to acquire voting stock, and § 614.4325(b)(3)(v) is modified accordingly.

This rule requires System institutions to establish a program offering each eligible borrower of a purchased loan the opportunity to acquire voting stock. We expect System institutions to have a fair and equitable program in place to make membership available to all interested borrowers. We anticipate that pursuant to such a program all borrowers will choose to become members. If, however, a borrower chooses not to acquire voting stock, the borrower will not be entitled to borrower rights under this rule, and § 614.4325(b)(3)(iv) is modified accordingly.

C. Need for the Rule

The ICBA comments that when loans are available for bidding, the competition in the bidding process is adequate to aggressive. It comments that there is robust competition among community banks for credit-seeking customers. Several commenters state that the rule allows System institutions to leverage high capital levels to spur new growth at the expense of private sector lenders. Many non-System commenters state that they are not aware of a lack of buyers of loans or loan pools from the FDIC after bank failures. They state that there are plenty of bidders on good quality loans. They comment that System institutions are not needed in the bidding process as there is no lack of commercial and community bank buyers for loans sold by FDIC. One commenter states that System institutions rarely reach out to help with loans that have material weakness. This commenter states that System institutions cherry pick the best loans from the community and that if the System needs loans it should reach out to farmers who need cheap credit but do not qualify for bank loans.

FCA response. The rule does not authorize System institutions to bid on loans or pools of loans that include loans not eligible for direct lending. The FDIC decides how to package loan assets for sale, and if the FDIC decides that the most cost effective and efficient way to sell loans is to create a pool of agricultural loans eligible for System financing, then System institutions will be able to bid on those pools. As mentioned above, if a determination of eligibility cannot be made, then the System institution is not authorized by this rule to purchase the loan or loan pool. This helps assure that the System institutions will only enter the FDIC auction market based on need. If there are enough non-System banks to bid on loans at auction, the FDIC is unlikely to go to the trouble and expense of packaging System eligible loans. The FDIC will have the incentive to limit the pool to loans eligible for purchase by Farm Credit institutions only if there is not an available market to buy agricultural loans.

D. Unfair Competition

Some non-System commenters opine that the rule allows System institutions to shop for high quality loans, including ineligible loans, while ignoring marginal credits. Many non-System commenters assert that the rule allows System institutions to use their GSE status and tax advantages to undercut the bidding of community banks in the FDIC auction process.

Many non-System commenters assert that because community banks have paid premiums to the Deposit Insurance Fund to enable the FDIC to resolve failed FDIC-insured banks, it would be unfair to allow non-paying FCS institutions to compete in bidding on loans of failed banks. They state that the rule allows the System to leverage its GSE status, and the fact that the System does not pay premiums into the Deposit Insurance Fund results in a gross unfairness to community banks.

FCA response. The final rule does not authorize System institutions to purchase loans ineligible for financing. System institutions are exercising their authority to support agriculture by bidding on agricultural loans where there is a need, consistent with their mission. Further, to the extent the System institutions are able to

participate in the bidding process, they are increasing the return to the FDIC on failed bank assets, thereby providing additional support to the insurance fund. The result is a benefit to FDIC-insured banks.

E. Out of Territory Loans and Safety and Soundness

Many non-System commenters question why FCA would propose a rule that would allow a System institution to purchase pools of loans without first obtaining the prior consent of the System institution in whose lending territory the borrower's agricultural operation is wholly or partially located. Many commenters state that this practice is not consistent with cooperative principles or a cooperative system and that out-of-territory loan purchases would pose safety and soundness issues for FCS lenders bidding on loans in territories with which the lenders are unfamiliar.

One commenter states that the rule allows System institutions to hold more than the usual volume of extra territorial loans and that capital that should be reserved to finance farming and agriculture within a territory would be diverted to purchase loans outside of the territory, some of which would be distressed and not related to farming, resulting in a loss of available capital in the district. The commenter stated that System institutions will expend resources to manage loans far outside their districts, resulting in added economic risks associated with the purchase of loans from failed banks. One commenter states that it appears the FCA is willing to allow System institutions to engage in significant risks in the quality of loans purchased just so they can achieve greater growth.

FCA response. The System is not the lender of last resort and therefore not required to fund loans that are not creditworthy or would pose considerable risk to the safety and soundness of the institution. On the other hand, the System, as a GSE, does have a mission responsibility to provide credit to rural areas where needed so long as the institution remains safe and sound. As such, the bidding System institution should consider the overall credit quality of the loan pool recognizing that the loans in the pool will have varying degrees of individual loan quality.

As a practical matter the chartered territory of the System institution located closest to the failed commercial bank would never be exactly in line with the headquarters of the eligible agricultural borrowers of the failed bank. It would be impractical for the FDIC to package loans by FCS territory. The rule requires the purchasing System institution to notify the System institutions in whose lending territory the borrowers' headquarters are wholly or partially located to alert them to the purchase and, as noted in the preamble to the proposal, consider partnering with that institution if the purchasing institution cannot adequately service a purchased loan located outside of its chartered territory. However, System institutions must comply with § 614.4070 if a new loan is subsequently made to the borrower.

To address safety and soundness concerns, we have added to the final rule a provision requiring System institutions to provide information on loans purchased under authority of this section in the Reports of Condition and Performance. This allows the FCA to monitor loans acquired through this program to make adjustments as necessary if safety and soundness issues arise.

F. Comments Requesting FCA Expand FCS Institutions' Authority

Several System commenters stated that the FCA should allow FCS institutions to purchase whole loans from FDIC successor banks and from non-System entities whenever it would benefit rural America. Many non-System commenters objected to an extension of the rule to successor banks.

The rule is intended to provide liquidity to areas in need of credit incident to a bank failure. The FCA does not intend to extend the rule beyond the purchase of loans directly from the FDIC either in its receivership or corporate capacity.

IV. Section-by-Section Analysis

A. Section 614.4070(d)

This section is finalized as proposed.

B. Section 614.4325(b)(3)

This section is finalized as proposed. See discussion on authority above.

C. Section 614.4325(b)(3)(i)

In response to the comments, and for the reasons discussed above, this section authorizes System institutions to purchase loans from the FDIC, but now requires participating System institutions to conduct thorough due diligence prior to purchase.

D. Section 614.4325(b)(3)(ii)

This section is finalized as proposed.

E. Section 614.4325(b)(3)(iii)

This section is finalized as proposed.

F. Section 614.4325(b)(3)(iv)

Commenters object to this section because it could result in allowing borrowers of distressed ineligible loans certain borrower rights. In response to the comments, the FCA has modified the rule to authorize purchase of only eligible loans. Therefore, only borrowers of eligible loans will be afforded borrower rights under this section. This section is finalized as proposed.

G. Section 614.4325(b)(3)(v)

In response to the comments, the FCA has modified the rule to authorize only the purchase of eligible loans. Therefore, a provision addressing divestiture of ineligible loans is unnecessary. This section is modified from the proposed rule accordingly.

H. Section 614.4325(b)(3)(vi)

To ensure adequate oversight and disclosure of loans purchased under this section, we adopt a new paragraph (vi), which provides that each System institution shall include information on loans purchased under authority of this section in the Reports of Condition and Performance required under § 621.12 of this chapter, in the format prescribed by FCA reporting instructions.

FCA makes System "call report" data publicly available through its Web site at *http://www.fca.gov.* Under § 621.13(a) of this chapter, System institutions must prepare Reports of Condition and Performance in accordance with FCA instructions.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, Banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

Accordingly, for the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations, is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

■ 1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart B—Chartered Territories

■ 2. Amend § 614.4070 by adding a new paragraph (d) to read as follows:

§ 614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

* * * * *

(d) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly or partially outside its chartered territory through the purchase of loans from the Federal Deposit Insurance Corporation in compliance with § 614.4325(b)(3), provided:

(1) Notice is given to the Farm Credit System institution(s) chartered to serve the territory where the headquarters of the borrower's operation being financed is located; and

(2) After loan purchase, additional financing of eligible borrower operations complies with paragraphs (a), (b), and (c) of this section.

Subpart H—Loan Purchases and Sales

■ 3. Amend § 614.4325 by revising paragraph (b) to read as follows:

§ 614.4325 Purchase and sale of interests in loans.

* * * * *

(b) *Authority to purchase and sell interests in loans.* Loans and interests in loans may only be sold in accordance with each institution's lending authorities, as set forth in subpart A of this part. No Farm Credit System institution may purchase any interest in a loan from an institution that is not a Farm Credit System institution, except:

(1) For the purpose of pooling and securitizing such loans under title VIII of the Act;

(2) Purchases of a participation interest that qualifies under the institution's lending authority, as set forth in subpart A of this part, and meets the requirements of § 614.4330 of this subpart;

(3) Loans purchased from the Federal Deposit Insurance Corporation, provided that the Farm Credit System institution with direct lending authority under title I, II or III of the Act:

(i) Conducts a thorough due diligence prior to purchase to ensure that the loan, or pool of loans, qualifies under the institution's lending authority as set forth in subpart A of this part, and meets scope of financing and eligibility requirements in subpart A or subpart B of part 613;

(ii) Obtains funding bank approval if a Farm Credit System association purchases loans or pools of loans that exceed 10 percent of total its capital;

(iii) Establishes a program whereby each eligible borrower of the loan purchased is offered an opportunity to acquire the institution's required minimum amount of voting stock;

(iv) Determines whether each loan purchased, except for loans purchased that could be financed only by a bank for cooperatives under title III of the Act, is a distressed loan as defined in § 617.7000, and provides borrowers of purchased loans who acquire voting stock the rights afforded in § 617.7000, subparts A, and D through G if the loan is distressed; and

(v) Divests eligible purchased loans when the borrowers elect not to acquire stock under the program offered in paragraph (b)(3)(iii) of this section in the same manner it would divest loans under its current business practices.

(vi) Includes information on loans purchased under authority of this section in the Reports of Condition and Performance required under § 621.12 of this chapter, in the format prescribed by FCA reporting instructions.

* * * * *

Date: May 19, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–12785 Filed 5–24–11; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133–AD79

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] provides that, on a temporary basis, NCUA shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account. Although this insurance coverage is self-implementing, and therefore already in place, this final rule: Clarifies the definition of the term "noninterest-bearing transaction account;" provides that this new insurance coverage is separate from, and in addition to, other coverage provided in NCUA's share insurance rules; and imposes certain notice and disclosure requirements.

DATES: The rule is effective June 24, 2011.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Dodd-Frank Act

Section 343 of the Dodd-Frank Act amended the Federal Credit Union Act (FCU Act) to include full share insurance coverage, beyond the Standard Maximum Share Insurance Amount (SMSIA),[2] for the net amount held in a noninterest-bearing transaction account by any member or depositor at an insured credit union. The term "noninterest-bearing" should be read as including "nondividend-bearing" to translate the provisions of the Dodd-Frank Act into credit union terminology.[3] Insured credit unions are not required to take any action to receive this additional insurance coverage. The additional coverage mandated by Section 343 of the Dodd-

[1] Public Law 111–203 (July 21, 2010).

[2] The SMSIA is defined as $250,000. 12 CFR 745.1(e).

[3] Federal credit unions cannot offer interest-bearing accounts; they can only pay dividends pursuant to the Federal Credit Union Act. Some state chartered, federally insured credit unions may offer interest-bearing accounts pursuant to their state credit union acts.