

U.S.C. part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581-0093. This final rule does not increase or impose any new information collection or recordkeeping requirements.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-622), AMS considered the economic effect of this action on small entities and determined that this final rule does not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. The Small Business Administration (SBA) published an interim final rule that became effective on August 19, 2019, (84 FR 34261) that adjusts the monetary-based size standards for inflation. As a result of this rule, the size classification for small egg-producing firms changed from sales of \$750,000 or less to sales of \$1,000,000 or less.

According to USDA's NASS, USDA collects data for the Agriculture Census (Ag Census) using the North American Industry Classification System (NAICS). The NAICS classifies economic activities and was developed to provide a consistent framework for the collection, analysis, and dissemination of industrial statistics used by government policy analysts, academia and the business community. It is the first industry classification system developed in accordance with a single principle of aggregation that production units using similar production processes should be grouped together.

In the 2017 Ag Census, the poultry and egg production classification (classification category 1123) was comprised of establishments primarily engaged in breeding, hatching, and raising poultry for meat or egg production. The 2017 Ag Census also shows there were 164,099 reported poultry farms in the United States and 36,012 egg producers. Ag Census data includes sales category ranges for the poultry sector but does not include separate sales categories for egg producers. Instead, NASS provides data for the broader category of "Poultry and Eggs." Therefore, AMS is not able to obtain stand-alone sales data for egg-producing farms. As a result, for this RFA, AMS used the broader category of poultry producers as the closest possible

substitute as the basis for determining the size of egg producers.

Of the 164,099 poultry producers identified in the 2017 Census of Agriculture, 148,788 (91 percent) reported sales of less than \$1,000,000 and thus fall under the SBA definition of small business. Therefore, the remaining 15,311 (9 percent) producers are considered large. If the egg producer segment has the same proportional distribution across firm sizes, 91 percent, or 32,771 egg producers are classified as small businesses, and 9 percent, or 3,241 egg producers are considered large.

Sales data are also available at the state level for the overall poultry sector. Using this data, and the assumption that the proportion of large and small poultry farms similarly applies to egg producers, Table 1 shows how the changes in geographical areas shift producer representation on the Board.

The final rule imposes no new burden on the industry, as it only adjusts representation on the Board to reflect changes in egg production. The adjustments are required by the Order and do not result in a change in the overall number of Board members. Even if most egg producers are small entities, this action does not change their ability to qualify for representation on the Board or add any new burden. In conclusion, AMS believes that reducing the regions from six to three and increasing the number of States within each region will contribute to greater representation of egg producing firms on the Board.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

List of Subjects in 7 CFR part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and Egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS amends 7 CFR part 1250 as follows:

PART 1250—EGG PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701-2718 and 7 U.S.C 7401.

■ 2. Revise § 1250.510 to read as follows:

§ 1250.510 Determination of Board Membership.

(a) Pursuant to § 1250.328 (d) and (e), the 48 contiguous States of the United States shall be grouped into three geographic areas, as follows: Area 1 (East)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, the District of Columbia, Alabama, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, and Texas; Area 2 (Central)—Arkansas, Oklahoma, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Tennessee, and Wisconsin; Area 3 (West)—Arizona, California, Colorado, Idaho, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(b) Board representation among the three geographic areas is apportioned to reflect the percentages of United States egg production in each area times 18 (total Board membership). The distribution of members of the Board is: Area 1-6, Area 2-6, and Area 3-6. Each member will have an alternate appointed from the same area.

Bruce Summers,
Administrator, Agricultural Marketing Service.

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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AD35

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility

AGENCY: Farm Credit Administration.
ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) adopts a final rule that amends its investment regulations to allow Farm Credit System (FCS or System) associations to purchase and hold the portion of certain loans that non-FCS lenders originate and sell in the secondary market, and that the United States Department of Agriculture (USDA) unconditionally guarantees or insures as to the timely payment of principal and interest.

DATES: This regulation shall become effective no earlier than 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Pursuant to 12 U.S.C. 2252(c)(1), FCA will publish notification of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of the final rule are to authorize FCS associations to buy as investments for risk management purposes, portions of certain loans that non-System lenders originate, and the USDA fully guarantees as to principal and interest to:

- Augment the liquidity of rural credit markets;
- Reduce the capital burden on community banks and other non-System lenders who choose to sell their USDA guaranteed portions of loans, so they may extend additional credit in rural areas; and
- Enhance the ability of associations to manage risk.

II. Background

In 1916, Congress created the System to provide permanent, stable, affordable, and reliable sources of credit and related services to American agricultural and aquatic producers. The System consists of 3 Farm Credit Banks, 1 agricultural credit bank, 67 agricultural credit associations, 1 Federal land credit association, service corporations, the Federal Farm Credit Banks Funding Corporation (Funding Corporation) and the Federal Agricultural Mortgage Corporation (Farmer Mac).¹ Farm Credit banks (which include both the Farm Credit Banks and the agricultural credit bank) issue System-wide consolidated debt obligations in the capital markets through the Funding Corporation, which enable associations to provide short-, intermediate-, and long-term credit and related services to farmers, ranchers, producers and harvesters of aquatic products, rural residents for housing, and farm-related service

businesses.² The System's enabling statute is the Farm Credit Act of 1971, as amended (Act).³

This rulemaking addresses investments that associations purchase and hold pursuant to their authority in sections 2.2(11) and 2.12(17) of the Act. In 2014, FCA proposed a new rule that would have authorized associations to purchase and hold, as investments, obligations issued or guaranteed by the United States or its agencies for risk management purposes.⁴ Under the proposed rule, no association could hold investments in an amount that exceeds 10 percent of its total outstanding loans.

FCA received more than 1,250 comment letters on this proposal. After consideration of these comments, FCA changed the term "obligations" in the proposed rule to the more narrow term "securities" in the final rule. FCA also added § 615.5140(b)(2) to the final regulation to clarify that individual loan portions purchased in the secondary market that are unconditionally guaranteed or insured by the United States (U.S.) government or its agencies as to principal and interest are not eligible risk management investments for FCS associations. The FCA delayed the effective date of the final rule until January 1, 2019.⁵

Shortly after we approved and published the final rule, several FCS associations, community banks, and a broker-dealer expressed concern that final § 615.5140(b)(1) and (b)(2) would disrupt the secondary market for the portions of loans that USDA fully and unconditionally guarantees as to both principal and interest. Representatives of the Office of the Administrator for the Rural Business Cooperative Service at USDA (USDA Administrator) contacted FCA to support these parties. More specifically, concerns were raised about the potential impact that the final rule could have on the secondary market for USDA-guaranteed portions of loans and, more broadly, on rural development. The USDA Administrator, two community banks, and the broker-dealer warned that the withdrawal of FCS associations from this market could

substantially reduce the liquidity in this market and the availability of credit in rural areas.

In response to the concerns raised by the USDA Administrator and market participants, FCA decided to review final § 615.5140(b)(1) and (b)(2) and consider their impact on the secondary market for loans that the USDA fully and unconditionally guarantees as to principal and interest. As a result of this review, FCA proposed to amend § 615.5140(b)(2) to exempt USDA-guaranteed loan portions from § 615.5140(b)(1), as well as a conforming change to § 615.5140(b)(3).⁶ More specifically, the proposed rule would amend § 615.5140(b)(2) to allow System associations to purchase in the secondary market, portions of loans that are originated by non-FCS institutions, and that the USDA fully and unconditionally guaranteed or insured as to both principal and interest.

The FCA also decided to grant temporary regulatory relief to certain System associations that had been active or expressed an interest in the secondary market for USDA-guaranteed loan portions, notwithstanding the prohibition in § 615.5140(b)(1) and (b)(2) that became effective on January 1, 2019.⁷ We believe that granting the "No Action" requests of these associations is appropriate to prevent any disruption in the secondary market for USDA-guaranteed loan portions and to maintain the pre-existing status quo while this rulemaking is pending and we consider input from the public. FCA placed strict conditions on those associations that were granted regulatory relief, and closely monitored their activity.

III. Comment Letters

The comment period expired on November 18, 2019. We received a total of 34 comment letters from a trade association representing FCS lenders, 2 Farm Credit banks, 7 FCS associations, the National Rural Lenders' Roundtable, which is a forum for lenders that use USDA guarantee programs, a commercial bank trade association, 21 community bankers, and an individual.

⁶ See 84 FR 49069 (September 18, 2019).

⁷ Several System associations asked the FCA in writing not take action against them for purchasing USDA-guaranteed loan portions. FCA granted limited "No-Action" relief to those associations that demonstrated that they have: (1) Experience in the secondary market for USDA-guaranteed loan portions, and (2) appropriate risk management controls in place to engage in this activity. In granting "No-Action" relief requests, FCA placed strong and appropriate Conditions of Approval on each association to ensure that such loan portions were purchased and managed in a safe and sound manner.

¹ The use of the terms "System" and "FCS" in this preamble and final rule does not, from this point forward, refer to Farmer Mac.

² The agricultural credit bank lends to, and provides other financial services to farmer-owned cooperatives, rural utilities (electric and telephone), and rural water and waste water disposal systems. It also finances U.S. agricultural exports and imports, and provides international banking services to cooperatives and other eligible borrowers. The agricultural credit bank operates a Farm Credit Bank subsidiary.

³ 12 U.S.C. 2001-2279cc. The Act is available at www.fca.gov under "Laws and regulations," and "Statutes."

⁴ See 79 FR 43301 (July 25, 2014).

⁵ See 83 FR 27486 (June 12, 2018).

Essentially, 24 commenters supported the proposed rule, but asked us to further revise the regulation so System associations could buy loan portions that any U.S. government agency fully and unconditionally guarantees as to principal and interest. One System commenter suggested that our regulations should grant both System banks and associations the exact same investment authorities. Nine commenters opposed the proposed rule, and asked FCA to withdraw it. Commercial bank commenters were divided with 13 supporting the proposed rule and, for the most part, seeking its expansion to all U.S. government loan-guarantee programs, while 9 bank commenters opposed it. The individual commenter expressed no opinion about whether FCA should adopt, modify, or retract the proposed rule.

Supporters claim that the proposed rule mutually benefits community banks and other non-System rural lenders, System associations, and rural communities. According to these commenters, selling USDA-guaranteed loan portions to FCS associations is advantageous to rural community banks because it increases their liquidity, which can enable them to originate more loans in rural areas. The proposed rule also strengthens the informal secondary market for USDA-guaranteed loans in rural areas, in which commercial bankers comprise the majority of buyers and sellers. As several commenters point out, System institutions have historically played a pivotal role in the secondary market for USDA-guaranteed loans.⁸ The proposed rule benefits System associations by enabling them to diversify their portfolios in a way that is consistent with their statutory mission to provide an adequate and flexible flow of stable credit into rural areas.⁹ USDA guarantees ensure that System associations generally have no credit risk¹⁰ when they purchase these loan

portions in the secondary market, which reduces risk exposure to capital and increases resilience of the balance sheet.

Most commenters who supported the proposed rule also told us that § 615.5140(b) should permit associations to purchase and hold portions of loans guaranteed by other U.S. government agencies as investments, such as the Small Business Administration (SBA),¹¹ Bureau of Indian Affairs, and the Department of Energy. According to these commenters, the logic for allowing associations to buy USDA-guaranteed loan portions also applies to all U.S. government-guarantee loan programs. More specifically, expanding this regulatory authority beyond USDA would, in the opinion of these commenters, promote a more robust secondary market for all U.S. government loan programs, which would ultimately benefit the customers of commercial banks and their local communities.

System commenters point out that the plain language of sections 2.2(11) and 2.12(17) of the Act expressly authorize associations to invest in obligations issued or insured by the U.S. and its

risks. See 84 FR 49070, footnote 4 (September 18, 2019). In addition, System associations may also be exposed to funding risk which could include basis risk, interest rate risk, and risks related to the transition away from the London Interbank Offered Rate.

¹¹ SBA administers various programs for guaranteeing loans to small businesses under the Small Business Act of 1953 and the Small Business Investment Act of 1958. Pursuant to § 5(g)(1) of the Small Business Act of 1953, 15 U.S.C. 634(g)(1) and 13 CFR 120.620, SBA guarantees the timely payment of principal and interest, which is backed by the full faith and credit of the United States, on Pool Certificates issued by authorized brokers and dealers who assemble these pools. Such Pool Certificates are eligible investments for FCS associations under § 615.5140(b)(1), and for FCS banks under § 615.5140(a)(1).

A separate program under section 7(a) of the Small Business Act of 1953, 15 U.S.C. 636(a), and 13 CFR 120.621 addresses SBA guarantees of portions of individual loans. Under the 7(a) program, loan originators obtain SBA guarantees for portions of individual loans. Each guaranteed portion of a loan is evidenced by an individual certificate. If the originator sells the guaranteed portion of the loan in the secondary market, the SBA's fiscal transfer agent will record who is the current registered holder of the loan guarantee certificate. If the registered holder does not receive timely payments of principal and interest because the borrower defaulted, or the loan originator or the fiscal transfer agent failed to perform its obligations (in accordance with 13 CFR 120.621(b)), the SBA will purchase the guaranteed portion of the loan from the registered holder for an amount equal to the unpaid principal and the accrued interest due on the date of SBA's purchase. SBA-guaranteed portions of individual loans under the section 7(a) program are not eligible investments for System banks and associations under § 615.5140. However, FCS banks and associations may purchase and hold these individual SBA-guaranteed loan portions under FCA's loan participation regulations only if the underlying borrowers are eligible System borrowers.

agencies. Most System commenters asked us to authorize associations to buy loan portions guaranteed by other U.S. government agencies *after* we enact this final rule. System commenters noted that our previous investment regulations permitted FCS banks and associations to buy and hold loan obligations that U.S. government agencies guaranteed, and they urged us to restore this regulatory framework.

One System association opined that FCA exceeded its statutory authority by repealing the regulation that authorized associations to buy any guaranteed obligation issued by any U.S. government agency. According to this commenter, existing § 615.5140(b)(1) and (b)(2) is incompatible with the “unambiguously expressed intent of Congress.” This commenter asked the FCA to authorize System associations to buy and hold any obligation guaranteed by all U.S. government agencies, either in this final rule, or by another prompt agency action.

As noted earlier, nine commercial bank commenters asked the FCA to withdraw the proposed rule and retain the current investment regulation for FCS associations. According to these commenters, Congress specifically established Farmer Mac as the System institution that would operate the secondary market for loan portions that the USDA guarantees for loan originators. Augmenting the liquidity of rural credit markets and reducing the capital burdens on loan originators is the role that these commenters believe Congress assigned to Farmer Mac, not FCS associations. Opponents of the proposed rule claim that the FCA, as the regulator of both FCS lenders and Farmer Mac, is creating “a duplicate and redundant secondary market” that will create unnecessary intra-System competition to Farmer Mac's detriment. The proposed rule's objective of enhancing the ability of associations to manage risks could, in the view of these commenters, be achieved if associations “were to use Farmer Mac as a secondary market as Congress intended, rather than trying to create their own secondary market.”

These commenters also dispute that sections 2.2(11) and 2.12(17) of the Act authorize associations to purchase interest in loans that non-System lenders originate and USDA guarantees. According to these commenters, these two statutory provisions authorize associations to buy and sell loans insured by U.S. government agencies and FCS banks, not loans originated by non-System lenders. Opponents of the proposed rule claim that FCS associations are not indispensable to the

⁸ USDA guarantees loans to borrowers who are both eligible and ineligible to borrow from the System. FCA lending regulations in Part 614 already authorize FCS banks and associations to buy the USDA-guaranteed portions of loans to eligible borrowers under their loan participation authorities. USDA loan guarantees to eligible borrowers that are purchased under the loan participation regulations are not subject to a portfolio limit, or other requirements of these investment regulations. Final § 615.5140(b)(2) only affects USDA guarantees for loans to ineligible borrowers or borrowers whose eligibility status is uncertain.

⁹ See preamble and section 1.1(a) of the Act.

¹⁰ However, these guaranteed loan portions may expose investors to premium risk, operational risk, and funding risk. The preamble to the proposed rule addressed potential premium and operational

secondary market of USDA-guaranteed loan portions and, therefore, this rule is not necessary to provide a flexible flow of affordable credit into rural areas.

IV. Final Rule

After reviewing and considering the comment letters received on the proposed rule, the FCA now finalizes the proposed rule without change. Specifically, the final rule amends § 615.5140(b)(2) to allow System associations to purchase in the secondary market, the portions of loans that non-FCS institutions originate and that the USDA fully and unconditionally guarantee¹² or insured as to both principal and interest.

The FCA proposed to amend existing § 615.5140(b)(2) so associations could purchase only USDA-guaranteed loan portions because it is specifically what the USDA Administrator, several FCS associations, community banks and a broker-dealer requested. Loan guarantee programs of other U.S. government agencies are outside the scope of this rulemaking. Most System commenters urged us to promptly finalize the proposed rule, and then subsequently consider other U.S. agency-guaranteed loan programs. For all these reasons, this final rule allows FCS associations to purchase and hold only loan portions that the USDA fully and unconditionally guarantees as to principal and interest.

One System commenter claims that sections 2.2(11) and 2.12(17) of the Act reflects Congress' "unambiguously expressed intent" to allow associations to buy and hold obligations guaranteed by any U.S. government agency as investments. Therefore, any regulation that prohibits or restricts the ability of associations to do so would, in the opinion of that commenter, exceed FCA authority. For this reason, the

commenter's position is that the final rule or another action by FCA must immediately authorize associations to buy loan obligations guaranteed under any U.S. government agency program.

FCA disagrees with the commenter's interpretation of Act. The text, structural framework, and history of the Act indicates that Congress granted FCA discretion to impose conditions and constraints by regulation on how System institutions exercise their statutory powers in various circumstances. We note that the introductory text to sections 2.2 and 2.12 of the Act, which the commenter invokes, expressly states the powers of each association are subject to regulation by FCA. Additionally, section 5.17(a)(9) of the Act authorizes FCA to "prescribe rules and regulations necessary or appropriate for carrying out this Act."

From time to time, FCA has exercised its powers under these statutory provisions to enact regulations that place limits on the statutory authorities of System banks and associations, especially in the area of investments. Reasons for limiting System's statutory authorities include, but are not limited to: (1) Preserving the System's safety and soundness; (2) implementing various legal requirements that apply to the System; and (3) ensuring that FCS activities and operations are compatible with its status as a government-sponsored enterprise that extends credit to agriculture and other eligible borrowers in rural America. For decades, FCA regulations have limited System investments by amount, type, credit quality, and purpose even though the Act is silent on these issues. For these reasons, we conclude that FCA has authority under the Act to impose by regulations restrictions on the types of obligations guaranteed by U.S. government agencies that System institutions may purchase and hold.

In this context, the final rule is within the scope of the Act and FCA's statutory authority. We have amended our association investment regulations periodically in the past as circumstances changed, and we may do so again in the future if we determine that evolving conditions require further regulatory revisions. In the meantime, the final rule strikes a balance between the needs and interests of USDA, FCS associations, a significant segment of rural community banks, and rural credit markets. We observe that USDA loan guarantee programs focus primarily on the credit needs of rural residents and their communities, whereas similar loan guarantee programs of other U.S. government agencies do not. USDA loan

guarantee programs overall are uniquely compatible with the System's mission, as a government-sponsored enterprise, to provide stable and affordable credit to agriculture and other authorized needs in rural America.

As noted earlier, one System commenter opined that FCS banks and associations should have the exact same investment authorities under our regulations. This issue is outside the scope of our current rulemaking. The preamble to the final Investment Eligibility rule that we issued in 2018 explained why the investment authorities of System banks and associations are different under these regulations.¹³

We now respond to comments from the commercial bankers who opposed the proposed rule. As discussed earlier, these commenters point out that Congress established Farmer Mac as the System's secondary market operator. These commenters also note that the Act expressly authorizes Farmer Mac, not System associations, to operate the secondary market for USDA-guaranteed loans. These commenters claim that our proposal would establish a duplicative secondary market, without statutory authority, and the resulting intra-System competition will harm Farmer Mac as well as "several hundred community banks that actively conduct business with Farmer Mac."

Farmer Mac did not submit a comment letter. As a result, Farmer Mac, on its own behalf, did not raise any of the issues that the commenters brought up.

This amendment to § 615.5140(b)(2) neither violates the Act, nor is it contrary to Congressional intent, as these commenters allege. In response to these commenters, sections 2.2(11) and 2.12(17) of the Act expressly authorize associations to buy obligations of or insured by the U.S. and its agencies, and these provisions are separate and distinct from Farmer Mac's authority under several provisions of title VIII of the Act to purchase, hold, and securitize loan portions guaranteed by USDA.¹⁴ In

¹² Lenders who originate loans that are eligible for USDA guarantees only obtain a conditional guarantee from the USDA. The guarantee is conditional on the lender complying with the origination and servicing regulatory requirements applicable to the loan, as well as other program requirements. Loan originators may sell the USDA-guaranteed portions of their loans, in the form of an assignment, to other persons, including individuals, corporate entities, and other financial institutions. See, 7 CFR 762.160, 1779.65, 3575.65, and 4279.75. Pursuant to these regulations, the seller must submit a form to the USDA that identifies the party that becomes the holder of record. *Id.* A purchaser who subsequently assigns the loan guarantee to another party must similarly comply with the same requirement. Only an assignee who is listed as the holder of record for the loan guarantee may seek payment from the USDA if the borrower defaults. The USDA provides an unconditional guarantee to a good-faith guarantee holder who purchased the guaranteed portion of the loan from the loan originator or a holder of an assignment, including such transaction made in the secondary market.

¹³ See 83 FR 27493 (June 12, 2018).

¹⁴ Titles VII and VIII of the Agricultural Credit Act of 1987 chartered Farmer Mac. See Public Law 100-233, 101 Stat. 1568, 1686 (Jan. 6, 1988). The former General Counsel of FCA issued a legal opinion concluding that System institutions did not have authority under the Act to securitize their loans and sell the resulting securities in the secondary market. This legal opinion influenced Congress to create Farmer Mac. [See 133 Cong. Rec.S. 16909 (daily ed. Dec. 2, 1987) Originally, the only loans that qualified for Farmer Mac programs were the types of agricultural and rural home mortgages that System lenders, other than banks for cooperatives, could originate. The Food, Agriculture, Conservation, and Trade Act of 1990 added portions of loans that the USDA guarantees

granting these authorities to Farmer Mac, Congress did not repeal other provisions of the Act that authorize FCS banks and associations, subject to FCA regulation, to invest in obligations of or insured by the U.S. or its agencies, including USDA fully-guaranteed loan portions.

The opponents of the proposed rule also claim that the Act does not allow FCS associations to buy USDA-guaranteed loan portions from non-System loan originators. We respond that these commenters have misinterpreted the Act. Although FCA banks and associations generally lack authority to buy most loans (and portions thereof) from the non-System lenders, the Act carves out exceptions, such as sections 2.2(11) and 2.12(17) of the Act. Since USDA-guaranteed obligations qualify as eligible investments under sections 2.2(11) and 2.12(17), System associations may buy them from any *bona fide* seller, including community banks, and other non-System lenders.

Beyond their legal arguments, these commenters also claim that allowing associations to buy USDA-guaranteed loan portions from non-System originators is detrimental to Farmers Mac and the broader secondary market. However, these commenters did not provide any data, information, or analysis that supports their claim that the proposed rule would harm Farmer Mac.¹⁵ Instead information provided by the USDA, and comment letters received from a majority of community bank commenters contradict these assertions. As noted in the preamble to the proposed rule, USDA informed FCA that the FCS in recent years has constituted as much as 40 percent of the secondary market for USDA loan guarantees. The majority of community bankers who commented on the proposed rule told us that System associations play a beneficial role in this secondary market. These commenters

also stated that System associations that buy these guaranteed loan portions enable community banks to reinvest the sale proceeds back into local communities. These comments support one of FCA's objectives in this rulemaking, which is to augment liquidity of rural credit markets. As stated above, Farmer Mac did not comment on the proposed rule.

One commenter claimed that "FCS lenders have long desired to operate their own secondary market, and FCA's proposal would lay the groundwork allowing them to do so." We disagree with this comment. As discussed in greater detail above, the Act does not authorize System banks and associations to securitize assets and then sell the resulting securities to investors. Associations buy USDA guaranteed loan portions in the secondary market from willing sellers, the majority of which are commercial banks, and then hold those investments for risk management purposes.

The proposed rule would not enable FCS lenders to "operate their own secondary market" as the commenter alleges. At most, System associations would resume their previous role as a meaningful participant in the longstanding informal secondary market. FCA proposed this rule after USDA provided data and information that substantiated its claim¹⁶ that the System's withdrawal from this secondary market actually disrupts it. Allowing System associations to return to the informal secondary market for USDA loan guarantees provides additional liquidity and funding sources to those market participants who opt to engage in these transactions.

For the reasons discussed in the preamble, the final rule amends § 615.5140(b)(2) to allow System associations to purchase in the secondary market, the portions of loans that non-FCS institutions originate and that the USDA fully and unconditionally guarantee or insured as to both principal and interest.

V. Regulatory Flexibility Act and Major Rule Conclusion

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule would not have a significant economic impact on a substantial number of small entities. Each of the

banks in the 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, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

Under the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this final rule is not a "major rule," as the term is defined at 5 U.S.C. 804(2).

Lists of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a), Pub. L. 100-233, 101 Stat. 1568, 1608; sec. 939A, Pub. L. 111-203, 124 Stat. 1326, 1887 (15 U.S.C. 780-7 note).

§ 615.5140 [Amended]

■ 2. Amend § 615.5140 by revising paragraphs (b)(2) and (3) to read as follows:

* * * * *

(b) * * *

(2) *Secondary market Government-guaranteed loans.* In addition to investing in the securities described in paragraph (b)(1) of this section, each Farm Credit System association may also manage risk by holding those portions of loans that:

(i) Lenders, which are not Farm Credit System institutions, originate and then sell in the secondary market; and

(ii) The United States Department of Agriculture fully and unconditionally guarantees or insures as to both principal and interest.

(3) *Risk management requirements.* Each association that purchases investments pursuant to paragraphs (b)(1) and (2) of this section must

under the Consolidated Farm and Rural Development Act to the statutory definition of "qualified loan" in section 8.0(7) of the Act. See Public Law 101-624, § 1839(b), 104 Stat. 3359, 3835 (Nov 28, 1990). The Food, Conservation and Energy Act of 2008 further expanded the definition of "qualified loan" in re-designated § 8.0(7) of the Act to include loans and interest in loans for an electric or telephone facility from a cooperative lender to a borrower who is eligible for loans under the Rural Electrification Act of 1936. See Public Law 110-234, § 5406(a), 122 Stat. 923, 1158 (May 22, 2008).

¹⁵ Since Farmer Mac has been granted this authority in 1990, it has been and continues to be an active participant in this secondary market. It currently holds over \$2.2 billion in USDA's guaranteed loan portions (See Farmer Mac Reports 2019 Results, Pg. 9, <https://www.farmermac.com/wp-content/uploads/Farmer-Mac-Reports-2019-Results.pdf>).

¹⁶ In the proposed rule, we indicated that data provided by USDA shows that loan originators retain approximately 60 percent of the USDA-guaranteed portions of such loans and sell the remaining 40 percent in the secondary market, often at a premium. See 84 FR 49069 (September 18, 2019).

document how its investment activities contribute to managing risks as required by paragraph (b)(1) of this section. Such documentation must address and evidence that the association:

* * * * *

Dated: September 1, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 119

RIN 3245–AH11

Regulatory Reform Initiative: Program for Investment in Microentrepreneurs (PRIME)

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is revising one regulation and removing 19 regulations from the Code of Federal Regulations (CFR) related to the Program for Investment in Microentrepreneurs (PRIME) that are repetitive and unnecessary because they duplicate identical guidance and requirements already stipulated in other legal sources and/or provided to grant applicant and recipients in the annual PRIME funding opportunity announcement. The removal of these regulations assists the public by simplifying SBA's regulations in the CFR and reducing the amount of time grant applicants and recipients must spend reviewing programmatic guidance.

DATES: This rule is effective on November 5, 2020.

FOR FURTHER INFORMATION CONTACT: Daniel Upham, Chief, Microenterprise Development Division, Office of Capital Access, at 202–205–7001 or daniel.upham@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Part 119—Program for Investment in Microentrepreneurs (“PRIME” or “The Act”)

Under the PRIME program, SBA is authorized by 15 U.S.C. 6902 to make grants to qualified organizations for the purpose of funding: (i) Training and technical assistance to disadvantaged microentrepreneurs; (ii) training and capacity-building services for microenterprise development

organizations; (iii) research and development of the best practices in the fields of microenterprise development and technical assistance for disadvantaged microentrepreneurs; and (iv) other related activities as the Agency deems appropriate.

In this rule, SBA is modifying one regulation and removing 19 regulations from the CFR related to the Program for Investment in Microentrepreneurs (PRIME) that are no longer necessary because they duplicate identical guidance and requirements already stipulated in the enabling legislation (15 U.S.C. 6901, *et seq.*), the governmentwide grant regulations (2 CFR part 200), and/or provided to grant applicant and recipients in the PRIME funding opportunity announcements published annually by SBA at www.grants.gov. The removal of these regulations will assist the public by simplifying SBA's regulations in the CFR and reducing the amount of time grant applicants and recipients must spend reviewing programmatic guidance.

SBA proposed a rule with these amendments on February 7, 2020, and the comment period ended on April 7, 2020. 85 FR 7254. SBA received three comments on the proposed rule. None of the comments received contained any substantive comments on the content of the rule. Therefore, SBA is proceeding with publication of the final rule with no changes from the proposed rule text.

II. Section by Section Analysis

A. Section 119

This rule currently summarizes the purpose of the PRIME program. SBA retains this statement of programmatic purpose and adds further subsections addressing how qualified organizations may apply for grant awards under the PRIME program.

B. Sections 119.2 Through 119.20

These rules provided guidance to PRIME program applicants regarding the application and selection process, as well as inform grant recipients of certain restrictions and requirements related to the conduct of PRIME grant projects. They are no longer necessary because the guidance, restrictions, and requirements they reiterate are also covered in other sources that are more authoritative, informative, and/or frequently updated. As such, they are duplicative of, and of less utility, than these other sources. SBA therefore is removing these sections and instead relying upon the content contained in other Federal guidance, such as the enabling legislation (15 U.S.C. 6901 *et*

seq.), the government-wide grant regulations (2 CFR part 200), and the PRIME program annual funding opportunity announcements and award terms and conditions issued by SBA. Program information will be published annually at www.grants.gov.

III. Compliance With Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

B. Executive Order 13771

This rule is an Executive Order 13771 deregulatory action with an annualized net savings of \$15,382 and a net present value of \$219,743 in savings, both in 2016 dollars. This rule will remove redundant information which will save grant applicants from reading the same information from multiple sources. The reduced burden assumes 130 grant applicants read the regulation per year, which is the average number of applicants per year, and that they would save 2 hours each from not reading the removed information. This time is valued at \$62.82 per hour—the wage of a community service manager based on 2018 U.S. Bureau of Labor Statistics (BLS) data—and adding 100 percent more for benefits and overhead for a total savings per year of \$16,333 in current dollars.

It is assumed that there will be no costs to this rule as it removes duplicative information. SBA received no comments on its regulatory economic analysis.

C. Executive Order 12988

This action meets applicable standards set forth in Section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the