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Fact Sheet on Proposed Rule Establishing Regulations on the Use of Unincorporated Business Entities

The Farm Credit Administration Board approved a proposed rule that would create a regulatory framework governing how Farm Credit System (System) institutions may use unincorporated business entities (UBEs) organized under state law. Some System institutions currently use UBEs to carry out certain functions, services or activities.

FCA proposes to establish new rules within part 611 by creating new subpart J governing UBEs and new sections 611.1150–611.1158. The FCA Board also approved proposed conforming changes to existing regulatory sections. If it becomes final, the rule will accomplish the following:

1. Create a uniform approval and oversight process the agency can use to consider requests by System institutions to organize or invest in UBEs for certain functions, services or business activities.
2. Affirm FCA's authority to regulate and examine the System institutions' use of UBEs, including FCA's authority to impose any conditions deemed necessary and appropriate related to UBE business activity and to take enforcement action against System institutions' activities involving UBEs.
3. Prohibit System institutions from using UBEs to engage in direct lending or any activity that exceeds their authority under the Farm Credit Act of 1971, as amended, or circumvents the application of cooperative principles, as FCA would determine.
4. Limit the amount of a System institution's aggregate equity investments in UBEs to one percent of the institution's total loans outstanding at the time the investment is made. FCA may impose a lower percentage limit for an institution on the basis of safety or soundness or other relevant concerns. FCA may also consider and approve a request for an investment that exceeds the one percent limit.

5. Establish standards for the proper and adequate disclosure and reporting of System UBE activity and ensure that the System's use of UBEs remains transparent and free from conflicts of interest.

The proposed rule does not give System institutions any new powers or authorities; it recognizes institutions' ability to exercise their existing incidental and investment authorities under the Farm Credit Act and their authority to establish UBEs in accordance with the process set out in the proposed rule.