

§ 614.4360

12 CFR Ch. VI (1-1-06 Edition)

is deemed to exist when a majority of the directors, trustees, or other persons performing similar functions of one borrower also serves the other borrower in a like capacity. A common management is deemed to exist if any employee of the borrower holds the position of chief executive officer, chief operating officer, chief financial officer, or an equivalent position in the related borrower's organization.

(B) The borrower controls in any manner the election of a majority of directors of a related borrower.

(C) The borrower exercises or has the power to exercise a controlling influence over management of a related borrower's operations through the provisions of management placement or

marketing agreements, or providing services such as insurance carrier or bookkeeping.

(b) Each institution shall make provisions for appropriately designating loans to a related borrower that are combined with the borrower's loan and attributed to the borrower to ensure that loans to the borrower are within the lending and leasing limits.

(c) *Attribution rules table.* For the purposes of applying the lending and leasing limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of three attribution rules are met as outlined in Table 1.

TABLE 1

Attribution rule	Criteria per § 614.4359	Attribute
(A) Liability *to the extent of the borrower's liability.	Borrower has primary or secondary liability Borrower's liability is taken out of an abundance of caution	Yes.* No.*
(B) Financial Interdependence (Economic survival of the borrower's operation will materially impact economic survival of the related borrowers operation).	Look-through notes (BC only) Source of Repayment: Borrower is obligated to supply 50 percent or more of related borrower's annual gross receipts, <i>and</i> reliance on the income from one another is such that the debt service of the related borrower could not be met if income flow from the borrower is interrupted or terminated. Commingled Operations: Assets or operations of the borrowers are commingled and cannot be separated without materially impacting the borrowers' repayment capacity	No. Yes. Yes.
(C) Control (The borrower, directly or indirectly, controls the related borrower).	The borrower owns 50 percent or more of the stock of the related borrower. The borrower owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and (1) Shares a common directorate or management with a related borrower, or (2) Controls the election of a majority of directors of a related borrower, or (3) Exercises a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping.	Yes. Yes.

[58 FR 40321, July 28, 1993, as amended at 62 FR 51015, Sept. 30, 1997. Redesignated and amended at 64 FR 34517, June 28, 1999]

§ 614.4360 **Lending and leasing limit violations.**

(a) Each loan, except loans that are grandfathered under the provisions of § 614.4361, shall be in compliance with the lending and leasing limit on the date the loan is made, and at all times thereafter. Except as provided for in paragraph (b) of this section, loans which are in violation of the lending

and leasing limit shall comply with the provisions of § 615.5090 of this chapter.

(b) Under the following conditions a loan that violates the lending and leasing limit shall be exempt from the provisions of § 615.5090 of this chapter:

(1) A loan in which the total amount of principal outstanding and undisbursed commitments exceed the lending and leasing limit because of a

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decline in permanent capital after the loan was made.

(2) Loans on which funds are advanced pursuant to a commitment that was within the lending and leasing limit at the time the commitment was made, even if the lending and leasing limit subsequently declines.

(3) A loan that exceeds the lending and leasing limit as a result of the consolidation of the debt of two or more borrowers as a consequence of a merger or the acquisition of one borrower's operations by another borrower. Such a loan may be extended or renewed, for a period not to exceed 1 year from the date of such merger or acquisition, during which period the institution may advance and/or readvance funds not to exceed the greater of:

(i) 110 percent of the advances to the borrower in the prior calendar year; or

(ii) 110 percent of the average of the advances to the borrower in the past 3 calendar years.

(c) For all lending and leasing limit violations except those exempted under § 614.4360(b)(3), within 90 days of the identification of the violation, the institution must develop a written plan prescribing the specific actions that will be taken by the institution to bring the total amount of loans and commitments outstanding or attributed to that borrower within the new lending and leasing limit, and must document the plan in the loan file.

(d) All leases, except those permitted under § 614.4361, reading "effective date of this subpart" in § 614.4361(a) and "effective date of these regulations" in § 614.4361(b) as "effective date of this amendment," must comply with the lending and leasing limit on the date the lease is made, and at all times after that.

(e) Nothing in this section limits the authority of the FCA to take administrative action, including, but not limited to, monetary penalties, as a result of lending and leasing limit violations.

[58 FR 40321, July 28, 1993. Redesignated and amended at 64 FR 34517, June 28, 1999]

§ 614.4361 Transition.

(a) A loan (not including a commitment) made or attributed to a borrower prior to the effective date of this subpart, which does not comply with the

limits contained in this subpart, will not be considered a violation of the lending and leasing limits during the existing contract terms of such loans. A new loan must conform with the rules set forth in this subpart. A new loan includes but is not limited to:

(1) Funds advanced in excess of existing commitment;

(2) A different borrower is substituted for a borrower who is subsequently released; or

(3) An additional person becomes an obligor on the loan.

(b) A commitment made prior to the effective date of these regulations which exceeds the lending and leasing limit may be funded to the full extent of the legal commitment. Any advances that exceed the lending and leasing limit are subject to the provisions prescribed in § 614.4360.

[58 FR 40321, July 28, 1993. Redesignated and amended at 64 FR 34517, 34518, June 28, 1999]

Subparts K-L [Reserved]

Subpart M—Loan Approval Requirements

§ 614.4450 General requirements.

Authority for loan approval is vested in the Farm Credit banks and associations.

[51 FR 41947, Nov. 20, 1986]

§ 614.4460 Loan approval responsibility.

Approval of the following loans is the responsibility of each district board of directors. The responsibility may be discharged by prior approval of such loans by the appropriate bank board, or establishment of a policy under which the authority to approve such loans is delegated to bank management (except paragraphs (d) and (e) of this section which cannot be delegated to management). If the approval of such loans is to be delegated to bank management, the loans are to be submitted promptly for post review by the bank board and a report disclosing all material facts relating to the credit relationship involved shall be submitted annually by bank management to the district board.