FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AC29

Organization; Termination of System Institution Status

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, we or our) issues this final rule amending our regulations that allow a Farm Credit System (FCS, Farm Credit, or System) bank or association to terminate its FCS charter and become a financial institution under another Federal or State chartering authority. The final rule updates the termination procedures for System banks and associations under sections 7.9, 7.10 and 7.11 of the Farm Credit Act of 1971, as amended, ensures that interested parties have sufficient time and opportunities to be fully informed about a termination proposal, and ensures that a significant proportion of equity holders are engaged in the termination process.

DATES: *Effective Date:* 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: Thomas Dalton, Senior Staff Accountant, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414; TTY (703) 883–4434; or Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

Through this rulemaking it is our objective to:

- Update the termination procedure for FCS banks and associations under sections 7.9, 7.10 and 7.11 of the Farm Credit Act of 1971, as amended (Act);
- Ensure that the FCA, an institution's board of directors, and the institution's equity holders have sufficient time and opportunities to be fully informed about a termination proposal before deciding whether to approve the termination;
- Provide that we may require a terminating institution to obtain independent analyses and rulings regarding a proposed termination;
- Ensure that a significant proportion of stockholders are engaged in the termination process; and
- Clarify existing requirements and ensure that stockholder disclosure materials are informative and easy to understand.

II. Background

The Agricultural Credit Act of 1987,[1] among other things, amended the Act expressly to permit System institutions to terminate their Farm Credit status and become another type of financial institution. We first issued regulations governing terminations in 1991. At that time, the regulations covered only ''small'' FCS associations. Our current termination rule, published on April 12, 2002, covers all associations and banks.[2] Since 1991, no FCS bank or association has terminated its charter under FCA regulations. However, in 2004 one System association adopted a commencement resolution to terminate its Farm Credit charter and subsequently be acquired by the subsidiary of a non-System bank. Ultimately, the association decided not to be acquired and not to terminate Farm Credit status. Although the association never submitted a termination application to us, the experience presented us with an actual event to evaluate the effectiveness and efficiency of our existing termination regulations. We found that, while the existing regulations provide the basic requirements to comply with the Act and effect a termination, certain revisions to the regulations would ensure a more orderly process for a FCS bank or association to terminate its charter.

On January 11, 2006, we published a proposed termination regulation [3] to update the existing termination regulations to clarify our requirements. Our proposals included: (1) Separating our review of a terminating institution's disclosure information, as required by section 7.11 of the Act (12 U.S.C. 2279e), from our approval of the termination itself, as set forth in section 7.10 of the Act (12 U.S.C. 2279d), (2) giving a terminating institution more flexibility in communicating with stockholders and the public during the termination process, (3) providing that we may require a terminating institution to obtain independent analyses of and rulings on matters related to the proposed termination, as well as to hold convenient informational meetings for stockholders, (4) strengthening protections for directors to obtain independent legal and financial advice and allow public or private expressions of their opinions about the termination, and (5) ensuring sufficient equity holder representation in voting processes by imposing a quorum requirement of 30 percent of voting stockholders that must be present in person or by proxy at the stockholder meetings for the termination and reconsideration votes.

III. Comments

We received 51 comment letters on the proposed rule. Eight comment letters were from the Farm Credit Council (FCC) and seven System institutions (U.S. AgBank, CoBank, AgriBank, and four FCS associations) (collectively, System commenters). We also received 43 comment letters from non-System entities including Rabobank International (Rabobank), a cooperatively owned bank and financial services provider based in the Netherlands; the Independent Community Bankers of America (ICBA); the Independent Community Bankers of North Dakota; the American Bankers Association (ABA) and from 39 commercial bankers. In its letter, Rabobank identified itself as the bank that attempted unsuccessfully to acquire a System institution in 2004 and stated that its comments were based on that experience. In general, System commenters supported the rule, whereas non-System commenters expressed opposition to portions of the rule that they believed would create barriers to the termination process and would be burdensome and costly.

A. General Comments

System commenters stated that:

- They support revising the termination regulation to more properly reflect the conditions and circumstances that exist when an institution's board votes to terminate. The facts and circumstances of any particular termination request must be carefully evaluated, and an independent analysis of various issues raised by the request may be appropriate. They encouraged FCA to require those studies as needed.
- They are concerned about the impact of any proposed termination on the System while the matter is pending and encouraged timely action by the Agency. They encouraged FCA to begin substantive review of a proposed termination as soon as possible after receipt of a plan of termination.
- They support the elimination of the termination authority from the Act.

Non-System commenters stated that:

[1] Public Law 100–233, 101 Stat. 1568 (January 6, 1988).

[2] *See* 67 FR 17907.

[3] *See* 71 FR 1704.

• The proposal creates obstacles and impediments that make termination difficult to achieve.
• They support giving the terminating institution permission to communicate with equity holders and the public during the termination process.
• The proposal restricts the institutions' right to terminate which leads to diminished performance, weak or entrenched management, and inefficient operations.
• The proposed amendments are complicated due to the fact that there are multiple requirements that are either redundant and/or unnecessary.
• The proposal demonstrates a bias toward protecting the overall System by proposing unnecessary and unjustifiable burdens for an institution seeking to leave the System, to the detriment of its members-owners.
• It is the right of the shareholders of a terminating institution to make this decision, not other institutions within the FCS or the FCA itself.
• There is a contradiction between making termination nearly impossible and maintaining the status quo, and expanding System authorities to serve a broader market, as System institutions are currently promoting through their Horizons Project.
• The proposal should be withdrawn because it is anti-termination, overwhelmingly complicated, and has provisions that are redundant, unnecessary, and arbitrary.

B. Our Consideration of the Comments Received

Upon consideration of all comments, the FCA Board has decided to make a number of changes to the regulations. We note that some of the comments are beyond the scope of this regulatory project.

It is not our intention to put up barriers or create undue burden for an institution wanting to exit the System. The proposed changes are meant only to ensure that all important interests, including the interests of borrower/stockholders, are protected and to ensure that the Agency has all the information needed to make a decision about whether or not to approve the termination request.

One commenter suggested that restricting the right of an institution to exit the System and ''compete in the private sector'' could lead to a weakened financial condition, entrenched management and inefficient operations in that institution. We do not believe that the rule restricts an institution from exiting the System. Rather, it provides for a deliberative process to achieve a termination of System status by taking into consideration the interests of the institution, its stockholders, and the System. After careful consideration, we do not find that our regulatory framework for termination of System status has been detrimental to the financial well-being of the System and its member institutions. We note that System institutions continue to operate in a safe and sound manner under the authorities provided by the Act and FCA Regulations.

In addition to the specific comments received on the proposed termination regulation, some non-System entities provided comments on areas outside of the proposed rule, including the objectives of the Horizons Project, the mission of the System, and certain FCS institutions' patronage practices. Although these comments will be considered by the Agency generally, we will not respond to them in this final rule because they are beyond the scope of this rulemaking project.

IV. Section-by-Section Analysis

Section 611.1200—Applicability of This Subpart

We did not propose any changes to this section and we received no comments. We adopt this section as final without changes.

Section 611.1205—Definitions That Apply in This Subpart

We proposed to define ''days'' to mean calendar days and ''business days'' to mean days on which the FCA is open for business. We also proposed to define ''equity holders'' to mean holders of stock, participation certificates, or other equities such as allocated equities.

We did not receive any comments on this section and adopt § 611.1205 as final without changes.

Section 611.1210—Advance Notices—Commencement Resolution and Notice to Equity Holders

We proposed requiring a terminating institution to send us a draft of its notice to equity holders before the notice is sent. If we do not request modifications to the draft notice within 2 business days of receiving it, the terminating institution may mail the notice to its equity holders. We also proposed requiring the terminating institution to place the advance notice to equity holders on its Web site and to send us copies of all contracts and agreements related to the termination. The proposed rule also requires the board of the terminating institution to vote on the termination at three separate times during the termination process.

We received comments from Rabobank, the ICBA, the ABA, and two groups of commercial bankers on the three votes required of the terminating institution's board of directors during the termination process. The first two votes are already required by the existing regulations. The first vote is the commencement resolution required by existing § 611.1210(a), when the termination process begins. The second vote, required by existing § 611.1220, specifies that the board must adopt a termination resolution before mailing the disclosure and termination plan to the FCA. The third (the new vote) is required by new § 611.1235(a), which specifies that the board must adopt a reaffirmation resolution no more than 14 days before mailing the plan of termination, including the disclosure information, to its equity holders. All comments received on the three board resolutions are summarized here.

Rabobank commented that the three-vote requirement does not support the stated purposes of the proposed rule, is burdensome, is not explained, and discourages a FCS institution from initiating a request. Rabobank asserted that the requirement is a ''de facto prohibition'' on exiting the System. The ICBA believed that the three-vote requirement is unreasonable and proves FCA's intent to prevent any entity from leaving the System. The ICBA noted that other procedures will ensure that the terminating institution's board will thoroughly ''vet'' its decision. The ICBA also pointed out that the regulation is arbitrary and capricious, and contrary to the clear statutory language, as well as unnecessary and inappropriate. The ABA stated that a third vote by the board, after FCA approves the plan, is needless and a potentially costly additional step that is meant to slow or derail the process. The ICBA and two groups of commercial bankers stated that a termination is not such an ''extraordinary event'' that the board has to vote three times and that our purpose is to create obstacles. Another group of commercial bankers believed that the requirement creates hurdles on voting procedures not found in other businesses, diluting the principle of local control. One group of commercial bankers suggested that a more honest approach would be for FCA to withdraw the proposal and ask Congress to pass legislation preventing terminations from the System, even though it acknowledged it would not support such legislation. It also observed that a burdensome policy does not serve the public interest and reflects efforts on

behalf of the FCC, the System's lobbying organization.

We stated in the preamble to the proposed rule that our objectives were to update the termination procedure and to ensure that an institution's board of directors, as well as FCA and the equity holders, have sufficient time to be fully informed about a termination proposal before deciding whether to approve the termination. The timing of each board resolution in the termination process is to ensure the directors are fully informed before taking the next significant step. A significant amount of time may elapse between adoption of the commencement resolution and submission of the termination plan to FCA for approval and distribution of the plan to stockholders prior to the stockholder vote. We believe that it is important and essential for the terminating board to validate its decision at these critical junctures and demonstrate continued support for the termination. The FCA and the terminating institution's equity holders need reassurance that the board of directors remains fully supportive of and committed to the termination throughout the process because we believe that a termination is an ''extraordinary event'' in the context of the System's congressionally mandated mission. The concept of local control is reinforced each time the board resolves to proceed with the termination process. The board can easily include its reaffirmation resolution with the disclosure and plan of termination at the time of mailing to its equity holders with a certified copy provided to FCA. For these reasons, we make no changes to the rule and adopt the provisions of §§ 611.1210, 611.1220, and 611.1235(a) as proposed.

A System bank (AgriBank) commented on the advance notice provision in § 611.1210(e) that allows a terminating bank to continue to participate in the issuance of consolidated and System-wide obligations through the termination date. The bank stated that once a System bank announces its intent to exit, the remaining banks should no longer be required to assume the joint and several liability for the debts of that exiting bank and that to do otherwise requires all remaining banks to ignore the reality of the transaction for the sole benefit of the exiting bank. The commenter added that, at a minimum, the exiting bank should be prohibited from issuing joint debt for any purpose other than the refinancing of joint debt that matures during the period prior to the exit.

The FCA did not propose any change to the provision in § 611.1210(e). We believe we must continue to allow funding for a terminating bank because, from a practical standpoint, a System bank does not have other available alternative funding sources until it terminates its System status.

Section 611.1211—Special Requirements

We proposed a new section providing that we may require a terminating institution to obtain independent analyses or studies of and rulings on matters related to the proposed termination. We proposed that if expert analyses, studies, or rulings are needed, we will require a terminating institution to engage experts acceptable to us to perform such work. We further proposed that we may require such analyses, studies, or rulings, or summaries of them, be provided to equity holders as part of the plan of termination, or separately. We also proposed that we may require a terminating institution to hold regional or local informational meetings for equity holders during the time period after they receive notice of the proposed termination and before the stockholder vote on termination. Any meetings would be subject to the plain language requirements of proposed § 611.1217(b) regarding balanced statements of anticipated benefits and potential disadvantages.

System commenters supported the FCA's proposal and encouraged FCA to require studies as needed. They asserted that the facts and circumstances of any particular termination request must be carefully evaluated and that an independent analysis of various issues raised by the request may be appropriate, including the impact on System-wide debt holders, the cost and credit rating of System-wide debt securities, tax aspects of the transaction, the valuation of dissenters' rights, the impact on other System institutions, and all the costs associated with either chartering a new institution to serve the applicable territory or amending the charters of other System institutions to serve it.

A non-System commenter (ICBA) stated that the broad scope of issues the FCA suggests studying are unwarranted and not reflective of the Act's intent. They asserted that the impact of a departure upon the System would be minimal because the System is adequately capitalized, any exit fee would remain with the System, and because the FCA has the necessary authorities to re-charter territory vacated by the terminating institution. Other non-System commenters suggested that the FCA should not be able to impose special requirements, assessments, analyses, rulings or studies before approving a termination plan of a System institution without also having some time limit or limitation on the number of requests that FCA might make of an institution.

Under section 7.10 of the Act, the FCA Board has broad regulatory authority to impose other conditions, as it considers appropriate, upon an institution seeking to terminate its System status. As discussed in the proposed rule, a termination raises issues for the FCA that are both significant and non-routine. Therefore, the FCA believes certain types of additional analysis or studies may be necessary or useful in evaluating a specific termination proposal. However, we believe that any requirements for special studies and analysis can be determined only on a case-by-case basis after considering the nature of the termination request and the extent of any studies already conducted by the terminating institution. The FCA agrees with the commenter's assessment that the System is currently strongly capitalized, as well as the statement that the FCA would act to address any territorial void that may occur as the result of an approved termination. We disagree, however, with the assertion that the System and the terminating institution's stockholders would not be impacted by a termination. While these capitalization and territorial issues are clearly factors that would be considered in any termination request, they are not the only factors that need to be considered or issues that may require additional study in evaluating the impact of a termination on the institution's stockholders, the System and other parties. The FCA will act prudently in determining the nature and extent of any required studies or analyses but believes it is inappropriate to limit, by number or amount, the requirements that we may impose in this area.

Another non-System commenter (Rabobank) objected to this proposal asserting that the additional requirements for studies and analyses and for holding informational meetings for stockholders could delay the termination process for a significant period of time and the requirements would impose substantial costs on the terminating institution. They assert that the FCA has not balanced the costs and benefits of these proposed new requirements or shown that the existing informational requirements are insufficient. The commenter suggested that, to the extent these required studies examine the System and parties other

than the terminating institution, these costs should be borne by the FCA, not by the institution.

It is not the FCA's intention to delay the termination process, nor do we believe that any delays resulting from these requirements would unduly extend the process. To the extent that special studies and analyses and informational stockholder meetings serve to extend the termination process, the FCA believes that this additional time is necessary to ensure that the stockholders of the terminating institution are fully informed as to the impact of the termination on their interests and that the FCA has the information it needs to deliberate appropriately on the issues and make a reasoned decision on the termination request.

The FCA is mindful of the costs of performing certain studies and analyses contemplated by this provision. The FCA concludes that the costs of studies and analyses related specifically to the impact of the termination on the institution and its stockholders are legitimate termination expenses that should be paid for by the institution and should not be deducted from the exit fee. However, there is merit to the commenter's suggestion that costs of studies that address issues regarding the impact of the termination on the System in general should be handled differently than studies that address the impact of the termination on the terminating institution and its stockholders. In response to this comment, in the final rule at §§ 611.1250 and 611.1255, we provide that a terminating institution required by the FCA to engage independent experts to conduct any assessments, analyses, or studies, or to request rulings that examine the impact of the termination on the System and parties other than the terminating institution and its stockholders may exclude such related expenses from the other termination expenses added back to assets under the requirements of existing §§ 611.1250(a)(4)(i) and 611.1255(a)(4)(i) pertaining to associations, and §§ 611.1250(b)(5)(i)(A) and 611.1255(b)(5)(i)(A) pertaining to banks, when calculating the terminating institution's preliminary and final exit fees. This means that the exit fee would be reduced by an amount approximately equal to the cost of such excluded expenses. We believe this change balances the responsibilities of termination expenses for the terminating institution (and the successor institution) with benefits that would be obtained from studies that examine System issues related to the termination request.

Section 611.1215—Communications With the Public and Equity Holders

We proposed a new section on communications. This section would permit a terminating institution to communicate with the public and with its equity holders during the termination process, provided that the written communications contain a legend urging equity holders to read the information statement and are filed with the FCA on the date of first use. If we believed any communications are inaccurate or misleading, we would require corrections to be made. We could also require a terminating institution to file written communications made by other participants in the termination and related transactions, such as a merger partner. The regulation contained a safe harbor for unintentional failures to make timely filings with the FCA and provided that communications that contain no new information from previously filed communications do not need to be filed.

We received comments on this proposed section from Rabobank, the ICBA, and a number of commercial bankers. Both Rabobank and ICBA supported allowing a terminating institution to communicate more freely with the public and equity holders during the termination process. All the commenters on this section recommended that we extend our monitoring of communications to additional parties. Rabobank recommended that the FCA monitor public communications about the termination made by other System institutions. ICBA recommended that we review for accuracy any information sent to the terminating institution's equity holders by parties opposed to the termination. The commercial bankers recommended that other System parties that oppose a termination should not be exempt from a requirement to disseminate accurate information. The FCA considered these recommendations but did not adopt them. While we do not support the dissemination of inaccurate information by any party, we believe that communications by the terminating institution require a higher level of scrutiny because of the disclosure requirements in section 7.11 of the Act, the fiduciary duties owed by the institution's management and directors to the institution's equity holders, and the institution's access to most all of the relevant facts surrounding a proposed termination. If a terminating institution believes other parties are making false and misleading statements, it will now be able to respond to such statements by means of public communications and direct correspondence with its equity holders. In addition, it is unlikely that parties other than the terminating institution's own equity holders would communicate directly with other equity holders. Under section 4.12A of the Act (12 U.S.C. 2184) and § 618.8310(b) of our regulations, the institution's equity holders are the only parties entitled to obtain a stockholder list for communications about the termination. Furthermore, we do not believe it is necessary or practical to monitor communications between equity holders.

The FCA adopts this section as proposed.

Section 611.1216—Public Availability of Documents Related to the Termination

Proposed § 611.1216 provides that we may post on our Web site, or require a terminating institution to post on its Web site, documents related to the termination. Disclosure of the documents will, at an early stage in the termination process, enable equity holders and others to understand the structure and ramifications of the plan of termination. We indicated in the preamble to the proposed rule that we expect the institution to post the board of directors' resolution on its Web site to commence the termination process, in addition to the notice to equity holders. We could require the posting of other documents such as charter documents of the successor institution or contracts entered into with a merger or acquisition partner. In addition, we could require the posting of the results of any special assessments, analyses, studies, and rulings. We stated that it was not our intention to require the posting of confidential information, and the terminating institution could request us to keep specific documents confidential.

The ICBA asserted that our proposal is designed to intimidate institutions from attempting to terminate and that the FCA does not have authority to deny a terminating institution's request to keep documents confidential. A number of commercial bankers also stated they disagreed with publishing sensitive information on the internet at the discretion of the Agency. A System commenter (AgriBank) stated its belief that the FCA, rather than the terminating institution, should determine whether information is confidential, and also that the information should be published on the FCA Web site.

After carefully considering the suggestions of the commenters, the FCA

has decided to adopt the final regulation without changes from the proposed rule. The purpose of this provision is to ensure a broad dissemination of the significant termination documents to equity holders and the public. We intend generally to accord confidential treatment to termination documents to the same extent we accord confidentiality to other documents we receive from System institutions. As for whether the information is on the FCA's Web site or the terminating institution's Web site, our intention is to ensure the availability of termination-related information. We will make the determination of which Web site is most appropriate for stockholders to obtain all relevant information on a case-by-case basis.

Section 611.1217—Plain Language Requirements

We proposed to move the plain language requirements in existing § 611.1223(a) to new § 611.1217 and to apply them to all communications with equity holders required by these regulations, not just to the information statement. To help ensure a balanced presentation of the information, we also provided that communications describing the anticipated benefits of the proposed termination should also give similar prominence to the potential disadvantages of the termination.

We did not receive any comments on this section and adopt it as proposed.

Section 611.1218—Role of Directors

In this proposed new section, we intended to emphasize the importance of directors in the termination process, not only when they take action on behalf of the terminating institution, but also when they act individually. First, we provided that directors could not be prohibited by confidentiality agreements or otherwise from publicly or privately commenting on a termination proposal and related transactions. In our view, such prohibitions would not be in the best interests of the equity holders because they prevent directors from consulting with the persons they represent and prevent equity holders from learning the opinions of those who should have the most detailed knowledge of the proposal. We noted that this provision would not permit directors to reveal trade secrets or confidential financial information that they would be prohibited from revealing in the absence of a confidentiality agreement or similar document.

We further proposed to provide that one or more directors have the right to obtain legal and financial advice on the proposed termination, and that the institution must pay reasonable expenses for such advice. This was intended to ensure that each director has the opportunity to obtain independent advice on the proposed transaction.

We received a number of comments on this proposal. AgriBank supported the provision on confidentiality agreements and suggested expanding it to prohibit curbs on communications by employees of the terminating institution, as well as to prohibit the terminating institution from requiring employees to express support for the termination as a condition of employment. AgriBank also stated that directors who obtain independent financial and legal advice should not be required to prove the reasonableness of their cost. Rabobank opposed permitting individual directors to seek independent legal and financial advice on a proposed termination and asserted that, if directors consulted outside parties for all board decisions, boards could no longer function. The ICBA found ''particularly objectionable'' our proposal to permit directors to obtain independent counsel and to permit directors to express their opinions about the termination publicly; the association also asserted that the Act does not authorize the FCA to override a legally binding confidentiality agreement. A number of commercial bankers expressed the view that our proposals in this section regarding directors' rights and in § 611.1216 regarding the public availability of information about the termination have the sole purpose of placing hurdles in an institution's way in order to prevent it from leaving the System.

In response to these comments, the FCA has revised its proposal in § 611.1218(b). In the final rule, we continue to provide that one or more directors of a terminating institution may seek independent advice on the termination, but we clarify when the board may deny payment of expenses for such advice. The board, by at least a two-thirds vote of the full board (the total number of current directors), may deny payment of such expenses if it determines that the expenses are unreasonable. If payment is denied, the board must specify why the expenses are unreasonable, notify the FCA within 1 business day of the denial, and explain the reasons for its determination in the disclosure information submitted to equity holders. We believe that this revised procedure more appropriately balances the rights of directors to obtain independent advice with the rights of the institution to avoid using the institution's assets for unreasonable expenses.

We adopt the other provisions of this section as proposed. We disagree with the assertion that the Act does not authorize the FCA to override a ''legally binding'' confidentiality agreement. On the contrary, section 7.10(a)(7) specifically authorizes FCA to promulgate rules to govern the termination process. In addition, we do not support requiring employees, against their will or as a condition of employment, to express support for a termination to customers (who are also current or prospective equity holders of the institution). However, we are not persuaded that employees are likely to be coerced in that manner, and we note that employees are prohibited under § 611.1219(a) from making misstatements or omissions of a material fact to equity holders. While we agree in principle that boards could not function, or would have difficulty functioning, if directors consulted outside parties for ''all board decisions,'' that is not what we proposed. Terminating status as a System institution is an extraordinary event, and it is likely to be equally extraordinary for the institution's directors, who by and large are farmers and ranchers. In this circumstance, we believe that providing for reimbursement of reasonable expenses for independent advice will help ensure that the board members act with full knowledge and understanding of the termination and its consequences. Similarly, we believe that enabling directors who oppose termination to express their opinions to equity holders and the public is consistent with the directors' duties to stockholders and will contribute to stockholders' more complete understanding of the proposed transaction.

Section 611.1219—Prohibited Acts

We proposed to move existing § 611.1215 to this new § 611.1219. In § 611.1219, we proposed to delete the reference to our preliminary approval of the termination, because we proposed to eliminate the preliminary approval provision. We also proposed to prohibit the institution and any director, officer, employee, and agent from making any untrue or misleading statement of a material fact, or failing to disclose any material fact to the FCA about the proposed termination and any related transactions. This prohibition already applied to statements made to or withheld from current or prospective equity holders.

Rabobank asserted that the FCA should also expressly prohibit untrue or

misleading statements or omissions of a material fact by any System institution and should sanction institutions that violate the prohibition, stating that ''anything less would allow an opponent of a termination to galvanize opposition based on falsehoods and deception.'' Although the FCA strongly opposes the dissemination of misleading and deceptive information by any party, we have decided not to incorporate Rabobank's recommendation in the regulation. The terminating institution's directors, officers, employees and agents have specific legal duties to the terminating institution and, indirectly or directly, to its equity holders; other System institutions do not. Consequently, we will not extend the regulation's prohibition to them. We note that, under the communications provisions, the terminating institution will be free to respond publicly, or in correspondence with equity holders, to statements made by other parties.

We adopt this section in the final rule without any changes from the proposal.

Section 611.1220—Termination Resolution

Proposed § 611.1220 was an expansion of the requirement in existing § 611.1220(a) for the board to adopt a termination resolution. We proposed that the board must adopt a resolution no more than 1 week before submitting the plan of termination to us. The resolution must: Indicate the board's continuing support for termination; authorize submission of the plan of termination to us; and (if we approve or take no action) authorize submission of the plan of termination to voting stockholders.

Except for comments on the three required board resolutions, we did not receive any comments on this specific provision and adopt § 611.1220 as final without changes.

Section 611.1221—Submission to FCA of Plan of Termination and Disclosure Information; Other Required Submissions

Proposed § 611.1221 revised the existing regulation to provide that a terminating institution may not file a plan of termination until at least 30 days after the institution has sent the notice to equity holders under § 611.1210(b). We also proposed to remove references to the Financial Assistance Corporation (FAC) because all outstanding FAC debt has been repaid.

We received one comment from the ICBA on the requirement that the terminating institution may not file its termination plan with FCA until at least 30 days after it mails the advance notice to its equity holders. The ICBA objected to FCA's applying an additional 30-day waiting period and stated this requirement is unnecessary because FCA will determine when the 60-day clock will begin and end for FCA's review and approval of the termination plan for submission to stockholders. The ICBA contended that the additional 30 days shifts the approval process from 60 to 90 days.

We disagree that the 30-day time period is unnecessary. In our experience, it is likely that an institution will take longer than 30 days to assemble a complete plan of termination after a decision is made to terminate. The 30-day waiting period will also encourage an institution to promptly inform us of its intention to terminate. The 30-day time period gives FCA time to prepare for receipt and review of the request. FCA will still be obligated to review and take action on the proposed termination plan and disclosure for submission to stockholders within 60 days of the filing of a complete plan of termination or, if we take no action within 60 days, the institution can submit the plan of termination to its voting stockholders. We adopt § 611.1221 as final without changes from the proposal.

Section 611.1223—Plan of Termination—Contents

We proposed numerous changes to this section including renaming this section ''Plan of termination—contents.'' We proposed a requirement at § 611.1223(b)(7) for a terminating institution to explain in the summary to the plan of termination whether the successor institution expects to engage in a corporate restructuring in the 18 months following termination.

We received comment letters from Rabobank and the ICBA on this section. Rabobank stated that the proposal does not explain why we would need this information or how we would use it, and that the requirement would inappropriately assert FCA oversight of a non-System entity. Rabobank further noted that if the terminating institution did not disclose a possible future restructuring, the successor institution may be discouraged from such a restructuring, despite potential benefits to equity holders, due to fear of interference from the FCA. Rabobank recommended that this requirement be eliminated. Rabobank stated that once an FCS institution has terminated its System charter and becomes a different type of financial institution, the institution is no longer regulated by FCA. The ICBA believed that this provision was without merit and should be deleted from the rule. The ICBA noted that an appropriate Federal or State authority charters the successor institution as a bank, savings and loan association, or other financial institution, so it is likely that this information will already be disclosed to voters. The commenters further stated that FCA is adding another legal roadblock, suggesting the successor institution could be sued after termination if an additional charter conversion was to occur.

We believe that this requirement benefits the equity holders who are entitled to know what the future plans of the terminating institution could include. If the terminating institution's conversion to another financial institution involves its acquisition by another financial services company or corporation, stockholders need to be fully informed before voting on the termination proposal. In addition, FCA could not interfere with the actions of the successor institution because the successor institution will not be subject to FCA oversight and regulation. Our principal concern is the right of stockholders to know if the successor institution, within the space of 18 months or less, will undergo further reorganization based on business planning underway at the time the termination application is filed with FCA. If the terminating institution has no such plans or is unaware of any future events that might result in its subsequent reorganization within the 18-month period following termination, no such disclosure will be required. Consequently, we are not changing this provision of the rule and adopt it as proposed.

We also proposed in paragraph (c)(7) to require a terminating institution to include summaries or copies of termination-related contracts and agreements, including copies of contracts and agreements in connection with the termination and operations of the successor institution; in paragraph (c)(13) to require the institution to disclose employment, retirement, and severance agreements; in paragraph (c)(26) that we may require a terminating institution to disclose assessments, analyses, studies, or rulings that we require the institution to obtain under proposed § 611.1211; in paragraph (c)(29) that we will require the terminating institution to include statements by directors that desire to make individual or group statements regarding the proposed termination and related transactions; and in paragraph (c)(3) that we would require the terminating institution to include a copy

of the reaffirmation resolution, a proposed new requirement set forth in proposed § 611.1235.

We did not receive any comments on these other provisions and adopt them, except for paragraph (c)(30), as final without changes. We have deleted paragraph (c)(30) in the final rule because the institution must send us the disclosure information before the board votes on the reaffirmation resolution.

Section 611.1230—FCA Review and Approval—Plan of Termination

Proposed new § 611.1230 separated our approval of the plan of termination and the related disclosure to stockholders, as required by section 7.11(a)(1) of the Act, from our decision on the termination as required by section 7.10(a)(2) of the Act. We proposed to retain provisions on our section 7.11 approval in this section and to move the section 7.10 approval to proposed § 611.1247. Our review of the disclosure information will precede the submission of the information to equity holders, as in the existing regulation, and we will begin the statutory review period on the date the disclosure information is complete, as determined by us. We proposed to review and approve or disapprove the termination itself after the equity holders have voted to approve the termination.

We received comments on this provision from all commenters. The FCC, three System banks, and four System associations stated they recognized the need for FCA to separate the approval of the termination plan, for purposes of distribution for a stockholder vote, from approval of the termination itself. At the same time, System commenters urged us to begin our substantive review as soon as possible after the application is received and to retain flexibility to make a decision as early as possible in the process so that the matter is not pending for a lengthy period. One bank noted that while improved information, analysis, and transparency are important objectives, FCA must be prepared to act when circumstances warrant, because failure to act could affect the System's investors and customers. One non-System commenter, the ABA, agreed that separating the review of the disclosure information from the review of the termination itself is appropriate. However, it expressed concern about FCA's ability to delay the process by requiring an unending level of information before the plan is deemed complete and argued that we should impose a reasonable cut-off point so that the institution can move forward. Rabobank stated that FCA's two approvals of the termination reduce clarity and impose costs and administrative burdens that outweigh the benefits. Rabobank believed that FCA burdens and encumbers the process to a degree that Congress explicitly did not intend and that we lack the authority to give ourselves intermediate approval steps. Rabobank also stated that requiring preliminary FCA review of the disclosure would delay the termination process without contributing a significant benefit to that process or to the stakeholders. One group of commercial bankers objected to this provision because it specifies no time limit for the conclusion of the process. Another group of commercial bankers argued that we create unnecessary barriers, legal impediments, time delays, and other obstacles for any FCS institution that may want to exit the System and that these obstacles are unparalleled in the financial services industry.

We agree with commenters that we should make a decision on the termination itself as early in the process as possible. Our separation of approval of the termination plan and disclosure for submission to stockholders from our approval (or disapproval) on the termination is not meant to delay unnecessarily the termination decision. We acknowledge that failure to act promptly and decisively may affect stockholders and investors' confidence. We will begin our substantive review as soon as possible and make a decision as early as possible. We disagree with other commenters that we are creating time delays and other obstacles by our process. We have always had the discretion, in our review and approval of other corporate applications (such as mergers and consolidations), to determine whether the application is complete before beginning the 60-day review. We have used our discretion by communicating promptly with institutions whose applications were incomplete and working closely with them to ensure completion. We will follow this approach as well for a termination request in determining whether it is complete and in notifying the terminating institution when the 60-day review period begins. In the alternative, FCA could reject a plan because it was incomplete, but the institution would need to begin the process anew. The proposal permits a more streamlined process. Once FCA notifies the institution that the termination plan and disclosure is complete, we are bound by the statutory requirement of section 7.11(a)(1) to act on the plan within 60 days. Should the FCA Board fail to act within the 60-day period, the institution may submit the plan and related disclosure to its stockholders for a vote. Accordingly, we adopt this provision as proposed.

Section 611.1235—Plan of Termination—Distribution

We proposed requiring the terminating institution's board of directors to adopt a reaffirmation resolution approving the termination not more than 14 days before mailing the plan to stockholders in order to ensure the continuing support of the board for the termination. Comments received on this provision and our response are included with the discussions of required board resolutions under § 611.1210.

We also proposed to require the terminating institution to provide the plan of termination to equity holders at least 45 days (instead of the existing regulation's 30 days) before the stockholder vote will occur.

One non-System commenter, the ABA, disagreed with our extension for the stockholder review period from 30 days in the current rule to 45 days, arguing that it is a needless delay and that 30 days is sufficient for stockholders to review and question any termination plan.

On the contrary, stockholders will need to thoroughly review an expected extensive disclosure and may have a number of questions to ask the institution's board and management. The additional 15 days will permit informational meetings to be held throughout the institution's territory, as proposed in § 611.1211(b), so that stockholders can have their questions answered and can discuss the pros and cons with other member-borrowers and with institution directors. These meetings will also give management an opportunity to explain the termination plan and procedures. We are finalizing this provision as proposed, except that we have made a non-substantive change to paragraph (a) to remove redundant language.

Section 611.1240—Voting Record Date and Stockholder Approval

Except for existing § 611.1240(c), which we proposed to move to § 611.1235, we proposed to retain the remainder of existing § 611.1240 with the following revisions. In paragraph (a), we proposed to require the stockholder vote to take place at least 60 days after we have approved the plan of termination (or 60 days after the end of our review period) instead of no more than 60 days after. We proposed this change to ensure that voters have

enough time to review and evaluate the proposal. In paragraph (c), we proposed a quorum requirement of 30 percent of voting stockholders that must be present (in person or by proxy) at the meeting. This would not require 30 percent of voting stockholders to cast a vote but would require their presence (in person or by proxy) at the meeting. We made this proposal because we believe an issue of such importance to all equity holders should be deliberated upon by a significant number of the voting stockholders, regardless of the number who ultimately vote. In paragraph (d), we restated the requirement in section 7.10(a)(6) of the Act that a majority vote by voting stockholders present and voting in person or by proxy at a duly authorized meeting is needed to approve the termination.

We also proposed to add a reference in new paragraph (e) to § 611.340, to clarify that the voting security regulation applies to this stockholder vote as well as § 611.330, which covers confidentiality in voting.

We received comments on the proposed 30-percent quorum requirement from a number of commenters. The System commenters supported the quorum requirement in this section for the first vote but not for the reconsideration vote in § 611.1245, as discussed below. About half of the commercial bankers recommended a simpler, more convenient voting process, stating that, ''in the day of emails and the internet,'' we should not require 30 percent of stockholders to be physically present for the meeting. The ICBA, ICB of ND, and ABA also objected to requiring 30 percent of stockholders to be physically present during a termination vote because of the difficulty and cost to the stockholders, some of whom live in remote rural areas. In addition, the ABA asserted that requiring at least 60 days between FCA approval of the plan of termination and the stockholder vote caused an unnecessary delay in the termination process.

The proposed rule does not require voting stockholders to be physically present at the stockholders' meeting in order to meet the quorum. As the rule says, voting stockholders must be present ''in person or by proxy.'' Voting stockholders have the option of attending the meeting in person, giving their proxies to another voting stockholder of their choice who will attend the meeting in person, or sending their proxies to the institution with (or without) instructions as to how to vote. Moreover, a voting process that permits voting via the Internet is not prohibited, provided the institution complies with the voting security and confidentiality requirements of the Act and FCA regulations.

As for the 60-day minimum period between FCA approval and the stockholder vote, we disagree that this will cause unnecessary delay in the termination process. We believe that at least 2 months are necessary for scheduling any pre-vote or ''information'' meetings for stockholders that we require or that the terminating institution wishes to hold, and for printing and distributing the disclosure information for stockholders.

We adopt this section in the final rule without any changes from the proposal.

Section 611.1245—Stockholder Reconsideration

In paragraph (b) of this section, we proposed adding a quorum requirement of at least 30 percent of voting stockholders for the same reasons we proposed a quorum requirement for the first stockholder vote. The stockholder reconsideration vote is provided for in section 7.9 of the Act (12 U.S.C. 2279c–2), which gives stockholders opposing an intra-System merger, transfer of lending authority, or termination the right to petition their institution for a re-vote (reconsideration vote) following any approval of the transaction. The petition must be signed by at least 15 percent of the voting stockholders and must be delivered to the FCA within 35 days after the mailing of the notice to stockholders of the results of the first vote. If a majority of the voting stockholders votes against the transaction in the reconsideration vote, the transaction cannot take place.

All of the System commenters objected to having a 30-percent quorum requirement for the reconsideration vote, even though they supported the 30-percent quorum requirement for the first vote. They asserted that it was unduly burdensome and contrary to the Act. They did not specify how they believed it was contrary to the Act, but they said that the quorum requirement could create an incentive for stockholders supporting termination to boycott the reconsideration vote meeting. Non-System commenters opposed what they believed was a requirement that stockholders be physically present to count towards the quorum for the reconsideration vote; as we explain above, this interpretation is incorrect, and there is no requirement for stockholders to be physically present to make up the quorum for either vote.

We have considered the recommendation to eliminate the quorum requirement for the reconsideration vote and have decided to retain it. The quorum requirements for the reconsideration vote, as well as for the first stockholder vote, are consistent with our authorities under the Act to regulate the termination process. If we were to incorporate the System commenters' recommendation, it would be more difficult for the terminating institution to obtain the first vote than for stockholders to obtain a reconsideration vote. Furthermore, without the same quorum requirement for the reconsideration vote, there would be a possibility that a termination could be blocked by a significantly smaller number of stockholders in a reconsideration vote than the number of stockholders who originally voted in favor of it. We believe this result would be unfair. Under our proposal, it will be no more difficult to achieve a quorum for the reconsideration vote than for the first vote.

We adopt this section in the final rule without any changes from the proposal.

Section 611.1246—Filing of Termination Application and Its Contents

Proposed new § 611.1246 provides that, within 90 days of notifying us that voting stockholders have approved the plan of termination, a terminating institution may submit a termination application containing the information that is required by the termination regulations and any additional information that we request or that the terminating institution's board wishes to submit.

We received no comments that directly relate to the filing of the termination application with FCA following the stockholder vote. We adopt the provision as proposed.

Section 611.1247—FCA Review and Approval—Termination

We proposed new § 611.1247 that would provide for a separate approval of the termination application. As we noted above in the preamble discussion of § 611.1230, we proposed to review the termination application after our review of the plan of termination required by section 7.11(a)(1) of the Act and after a stockholder vote approving the termination. In this proposed new section, paragraph (a) stated that, after we receive the termination application, we will review it and either approve or disapprove the termination. Paragraph (b) stated that we will disapprove the termination if we determine that there are one or more appropriate reasons for disapproval, consistent with our statutory and regulatory authorities. We proposed to delete existing § 611.1230(b), which provides that we

may disapprove a termination if we determine it would have a ''material adverse effect on the ability of the remaining System institutions to fulfill their statutory purpose.'' While we did not rule out disapproval of a termination based on its ''material adverse effect'' on the remaining System institutions, we stated that we may disapprove a termination for any appropriate reason.

Proposed paragraph (c) set forth conditions required for our approval of the termination. In proposed paragraph (d), we provided that, when we approve a termination, we will also determine an effective date for the termination. Such date could be no earlier than the last to occur of the following events: (1) Fulfillment of the conditions in paragraph (c) of this section; (2) the terminating institution's proposed termination date; (3) 90 days after we received the termination application; or (4) 15 days after any reconsideration vote.

We received 33 comment letters on this provision of the proposed rule. In their comments on proposed § 611.1230, eight System commenters urged FCA to begin our substantive review as soon as possible after the application is received and to retain flexibility to make a decision as early as possible in the process so the matter is not pending for a lengthy period. One System bank noted that while improved information, analysis, and transparency are important objectives, FCA must be prepared to act when circumstances warrant, because failure to act could affect the System's investors and customers. In our response above to the comments on § 611.1230, we agreed on the importance of decisive action as early as possible. One System bank commented that we should approve a termination only if the institution's exit further fulfills the congressionally mandated mission and, at a minimum, any approval of a request should not be detrimental to the remaining institutions' ability to fulfill the mission. Rabobank stated that FCA's second vote, which would follow stockholder approval and three votes by the board of directors, is unfair to stockholders because it would veto the equity holders' mandate and undercut the democratic principles that give the stockholder-owners the right to make decisions governing their institution. Rabobank commented that our failure to impose a timeframe for FCA's vote could delay the process indefinitely. Rabobank also objected to our removal of all references to criteria that we may use or reasons we may give for disapproval, giving System institutions no way to ascertain whether a termination will be approved until an extraordinary amount of time and money has been expended. In particular, Rabobank objected to our removal of the criterion of ''material adverse effect'' from the regulation that governs our review, and argued that it is the only reason for disapproving a termination request, assuming all regulations were satisfied. It asked that this criterion be preserved from the current rule and that FCA clarify that we will disapprove a termination only based on a determination that the termination would have a material adverse effect. In the alternative, Rabobank asked FCA to identify additional criteria for disapproval and then republish its proposed rule with criteria for public comment. Rabobank stated that FCA owes System institutions greater transparency in how it will evaluate termination requests and recommended that we articulate clear standards for how we would review the request and make the decision after board and stockholder approval. The ICBA commented that the ''material adverse effect'' criterion should stay in the regulation as it is the one that makes the most sense in directing our approval process, and that all other issues, such as impact on stockholders, would have already been thoroughly vetted during the disclosure review process. The ICBA further noted that the payment of the exit fee and debt obligations will already ensure there is not an adverse effect on System institutions. The ABA noted that FCA retains the right to deny a termination if it has a materially adverse impact on the rest of the System even though the proposed rule eliminated this as a specified reason for denial. Also, the ABA expressed concern that ''materially adverse effect'' is not quantified in the proposed rule and suggested that FCA set forth a rule for public comment on the level of impact that we would consider material. In addition, the ABA criticized us for setting no time limit for approval or disapproval and establishing no criteria by which we would make the decision, noting that the grounds for rejection, if already approved by the stockholder owners, should be extremely restricted because we have numerous options for maintaining FCS services in the territory. The ABA recommended that FCA set out its potential reasons for rejection of a termination for notice and public comment. One group of commercial bankers commented that FCA may reject any termination plan even after the local institution has followed all procedures. It noted that FCA, as the System's regulator and surety of stockholder rights, should clearly spell out in advance the basis and timeframes for any such determination (of approval or disapproval). A second group of commercial bankers stated that the proposal should set clear deadlines for various stages of the approval process but that the proposal leaves many of the decision deadlines open-ended.

We believe that the System bank's suggestion that we should approve a termination only if the exit furthers fulfillment of the System's mission or, at minimum, approve a termination only if it is *not detrimental* to the remaining System institutions' ability to fulfill the mission is too narrow a reading of our statutory authority. The Act provides FCA with discretion to approve or disapprove a termination application and does not restrict our reasons for disapproving a proposed termination. With respect to our decision on the termination, FCA has statutory authority to approve or disapprove the termination, whether before or after a stockholder vote. Therefore, FCA disapproval would not be a ''veto'' of a stockholders' ''mandate,'' but would be an exercise of FCA's approval authority. In making our decision, we will consider all relevant factors, including stockholder actions on the termination proposal.

As explained in the preamble to the proposed rule, we have determined that a clear separation of the two approvals will ensure the proper level of scrutiny as to the merits of the proposal apart from the adequacy of the disclosure materials. Termination of System status raises numerous issues for the terminating institution's stockholders, the affiliated funding bank or remaining affiliated associations (as applicable), investors, and the public, all of whom must be considered. Three non-System commenters (Rabobank, ICBA, ABA) stated their belief that the *only* basis for our denial is if the termination has a material adverse effect on the ability of the remaining System institutions to fulfill their statutory purpose. Their intense focus on this one criterion supports our rationale for deleting this language from the rule because it diverts attention from any other reason(s) that we may need to consider. We may still decide that a termination should be denied based on the material adverse effect that it has on the remaining System institutions; however, it may not be the only reason or the principal reason. There are many factors that we will consider, including, but not limited to, the results of any stockholder vote on the termination. Under the law, we are

obligated to provide reasons for any disapproval, and our reasons cannot be arbitrary or capricious. Enumerating specific reasons for disapproval before we know the details of a termination application would not be appropriate and would unnecessarily limit our reasons for disapproval. Thus, we adopt this section as proposed.

Section 611.1250—Preliminary Exit Fee Estimate and § 611.1255—Exit Fee Calculation

We proposed several parallel revisions to these sections, which explain how to calculate the preliminary exit fee estimate that must be included in the plan of termination, and how to calculate the final exit fee. In §§ 611.1250(a)(4)(i) and 611.1255(a)(4)(i) pertaining to associations, and in §§ 611.1250(b)(5)(i)(A) and 611.1255(b)(5)(i)(A) pertaining to banks, we added expenditures for tax services, studies, and equity holder meetings as examples of expenses an institution may incur that are related to a termination. In § 611.1250(c), which contains the 3-year look-back adjustment provision, we expressly include real property and servicing rights as assets that may be undervalued, overvalued, or not recorded on the institution's books. We did not receive any comments on these provisions and adopt the proposed as final without any changes.

We also proposed to require a terminating institution to add to assets any tax benefit that arises due to the termination. The proposed rule noted that we already have discretionary authority under existing § 611.1250(c)(1)(vi) to require such an adjustment, but that we decided to expressly apply it to all terminations. This requirement is intended to balance existing and continuing provisions allowing for the deduction of tax expenses, due to termination, from assets in the preliminary and final exit fee calculations. A non-System commenter (Rabobank) suggested that FCA was attempting to incorporate ''all historical tax benefits,'' however derived, into the exit fee calculation. In proposing this provision, it was not our intention to go back through all the years of the terminating institution's existence and attempt to assess and recapture past tax benefits. Rather, the intent of the provision is only to ensure that any tax benefit that arises as a result of the termination itself be included in assets and in the calculation of the exit fee. FCA believes this would be on par with existing regulations at §§ 611.1250(a)(4)(ii)(B) and 611.1255(a)(4)(ii)(B) pertaining to associations, and in §§ 611.1250(b)(5)(iii)(C) and 611.1255(b)(5)(iii)(C) pertaining to banks, that address adjustments to assets for tax expenses resulting from the termination. The non-System commenter stated that the calculation of the exit fee should be based on financial statements prepared in accordance with generally accepted accounting principles (GAAP). We agree that this should be the starting point for determining the exit fee. However, the FCA has long held the position that strict application of GAAP may not result in the fairest treatment of certain types of transactions. For example, the existing rule provides that the final exit fee must be calculated based on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. In the development of the existing rule, we stated that using average daily balances mitigates the problem of widely fluctuating account balances that occur and the variability that would result from the timing of the exit fee computation date. The FCA has stated that some individual transactions can increase or decrease the exit fee to such a degree that average balances are not sufficient to offset their impact. As such, the existing rule also provides that the FCA may require certain adjustments that we deem necessary to ensure that the terminating institution appropriately values its assets and liabilities. The required adjustments are solely for the purpose of calculating the exit fee, and the institution would not be required to restate its financial statements to reflect these adjustments. The FCA believes that these provisions for adjustments are necessary in order to ensure that the terminating institution does not engage in activities that weaken its capital position in order to diminish or eliminate the exit fee.[4] As a result, we are finalizing this provision as proposed.

In the proposed rule, we solicited comments on whether we should limit the tax expense deductions from, and tax benefit additions to, assets in the exit fee calculation to Federal taxes. We were also interested in whether we should more narrowly draw the tax provision so that it includes only income taxes, or unavoidable tax expenses, or both. We received no comments on these issues. In consideration of this, we have opted not to limit the various types of taxes that may be included in the calculation of the exit fee and, as a result, make no changes in the final rule.

In § 611.1250(c), we proposed to replace references to ''tax liability'' with the term ''tax expense'' to clarify that we intend to refer to both current and deferred taxes. In paragraphs (a) and (b) of §§ 611.1250 and 611.1255, we proposed to remove outdated references to the FAC. We received no comments on these provisions and adopt as final the proposed changes.

Section 611.1260—Payment of Debts and Assessments—Terminating Association

Section 611.1265—Retirement of a Terminating Association's Investment in Its Affiliated Bank

Section 611.1270—Repayment of Obligations—Terminating Bank

Section 611.1275—Retirement of Equities Held by Other System Institutions

Section 611.1280—Dissenting Stockholder's Rights

We proposed to remove outdated references to the FAC in all the above sections except § 611.1265, to which we did not propose any changes. We did not receive any comments on the proposed changes and adopt the provisions as proposed.

We also received comments from System commenters on provisions we did not propose to amend. We would not consider adopting any of the commenters' suggestions on these provisions without publishing them for public comment; however, we would like to respond to the comments here. A System bank recommended that, in § 611.1260, we require a terminating association to reimburse its affiliated bank for any termination-related expenses incurred by the bank, so that the remaining associations will not be ''burdened'' with the costs of the termination. We note that the affiliated bank will keep any unallocated retained earnings attributable to the terminating association, and those earnings will indirectly benefit the remaining associations. The System bank also objected to our existing requirement in § 611.1265 that, if a terminating association's equities in its affiliated bank are not subject to a revolvement plan or an agreement between the association and the bank, those equities must be retired by the bank upon repayment of the direct loan. The bank asserted that the equities in question should be retirable only at the bank's discretion. In our view, such a provision could make it possible for a bank to frustrate the termination plan of an

[4] *See* the preamble discussion of ''Section 611.1240—Exit Fee'' in our proposed termination rule, 55 FR 28639 (July 12, 1990).

association. Since the Act permits an association to terminate without its bank's approval, we do not believe it would be appropriate to give the bank the power to impede the termination by refusing to retire equities. Of course, should retirement of the association's investment in its bank cause the bank to fall below its minimum capital requirements or to be in an unsafe or unsound condition, we would prohibit the bank from retiring the equities at that time.

The System bank further commented that, under § 611.1270, a terminating bank should be required to enter into an agreement with the remaining System banks for payment of its primary liability on System-wide debt, and also that the terminating bank must make a provision for payment of joint and several liability that is acceptable to the other banks. In previous rulemakings on this issue of repayment of System-wide debt, we proposed for public comment and considered a range of options. We believe the existing regulation is a fair balance of the interests of a terminating bank and the banks remaining in the System and will not give the remaining banks a de facto veto over the terminating bank's termination. In the case of primary liability, the terminating bank must propose a plan after consulting with the other System banks, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Insurance Corporation (FCSIC). The FCA must then decide whether the plan is acceptable. In the case of joint and several liability, the FCA will specify how the terminating bank will provide for this only in the event that the terminating bank and the remaining banks are unable to reach agreement.

The FCC and several System institutions suggested that we consider revising § 611.1280, which specifies how to calculate the value of the equities of a dissenting stockholder. One commenter suggested that a dissenting stockholder's interest be calculated without any deduction of the amount of the exit fee from the terminating institution's assets. On November 5, 1999, we published a proposed rule in the **Federal Register** that provided for such a calculation prior to deduction of the exit fee. (*See* 64 FR 60370.) However, the FCA did not adopt the proposal but instead reproposed the rule in 2001. (*See* 66 FR 43536, August 20, 2001.) In the preamble to that reproposal, we stated our view that, under the Act, payment of the exit fee was a prerequisite to a terminating institution's exercise of its authority to terminate. Consequently, the exit fee must be calculated and set aside before the dissenting stockholders' interests are valued. We note that, under this formula, dissenting stockholders will receive approximately the same proportionate value for their equities, whether they dissent or choose to be stockholders of the successor institution.

Section 611.1285—Loan Refinancing by Borrowers

We did not propose any changes to this section and we received no comments.

Section 611.1290—Continuation of Borrower Rights

We did not propose any changes to this section and we received no comments.

V. Regulatory Flexibility Act

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

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Rural areas.

■ For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2012, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a—2279f–1, 2279aa–5(e)); secs. 411 and 412 of Public Law 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Public Law 100–399, 102 Stat. 989, 1003, and 1004.

■ 2. Revise subpart P to read as follows:

Subpart P—Termination of System Institution Status

Sec.

Subpart P—Termination of System Institution Status

§ 611.1200 Applicability of this subpart.

The regulations in this subpart apply to each bank and association that desires to terminate its System institution status and become chartered as a bank, savings association, or other financial institution.

§ 611.1205 Definitions that apply in this subpart.

Assets means all assets determined in conformity with GAAP, except as otherwise required in this subpart.

Business days means days the FCA is open for business.

Days means calendar days.

Equity holders means holders of stock, participation certificates, or other equities such as allocated equities.

GAAP means ''generally accepted accounting principles'' as that term is defined in § 621.2(c) of this chapter.

OFI means an ''other financing institution'' that has a funding and discount agreement with a Farm Credit bank under section 1.7(b)(1) of the Act.

Successor institution means the bank, savings association, or other financial institution that the terminating bank or association will become when we revoke its Farm Credit charter.

§ 611.1210 Advance notices—commencement resolution and notice to equity holders.

(a) *Adoption of commencement resolution.* Your board of directors must begin the termination process by adopting a commencement resolution stating your intention to terminate Farm Credit status under section 7.10 of the Act. Immediately after you adopt the commencement resolution, send a certified copy by overnight mail to us and to the Farm Credit System Insurance Corporation (FCSIC). If your institution is an association, also send a copy to your affiliated bank. If your institution is a bank, also send a copy to your affiliated associations, the other Farm Credit banks, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation).

(b) *Advance notice.* Within 5 business days after adopting the commencement resolution, you must:

(1) Send us copies of all contracts and agreements related to the termination.

(2) Subject to paragraph (b)(2)(ii) of this section:

(i) Send an advance notice to all equity holders stating you are taking steps to terminate System status. Immediately upon mailing the notice to equity holders, you must also place it in a prominent location on your Web site. The advance notice must describe the following:

(A) The process of termination;

(B) The expected effect of termination on borrowers and other equity holders, including the effect on borrower rights and the consequences of any stock retirements before termination;

(C) The type of charter the successor institution will have; and

(D) Any bylaw creating a special class of borrower stock and participation certificates under paragraph (f) of this section.

(ii) Send us a draft of the advance notice by facsimile or electronic mail before mailing it to your equity holders. If we have not contacted you within 2 business days of our receipt of the draft notice regarding modifications, you may mail the notice to your equity holders.

(c) *Bank negotiations on joint and several liability.* If your institution is a terminating bank, within 10 days of adopting the commencement resolution, your bank and the other Farm Credit banks must begin negotiations to provide for your satisfaction of liabilities (other than your primary liability) under section 4.4 of the Act. The Funding Corporation may, at its option, be a party to the negotiations to the extent necessary to fulfill its duties with respect to financing and disclosure. The agreement must comply with the requirements in § 611.1270(c).

(d) *Disclosure to loan applicants and equity holders after commencement resolution.* Between the date your board of directors adopts the commencement resolution and the termination date, you must give the following information to your loan applicants and equity holders:

(1) For each loan applicant who is not a current stockholder, describe at the time of loan application:

(i) The effect of the proposed termination on the prospective loan; and

(ii) Whether, after the proposed termination, the borrower will continue to have any of the borrower rights provided under the Act and regulations.

(2) For any equity holders who ask to have their equities retired, explain that the retirement would extinguish the holder's right to exchange those equities for an interest in the successor institution. In addition, inform holders of equities entitled to your residual assets in liquidation that retirement before termination would extinguish their right to dissent from the termination and have their equities retired.

(e) *Terminating bank's right to continue issuing debt.* Through the termination date, a terminating bank may continue to participate in the issuance of consolidated and System-wide obligations to the same extent it would be able to participate if it were not terminating.

(f) *Special class of stock.* Notwithstanding any requirements to the contrary in § 615.5230(b) of this chapter, you may adopt bylaws providing for the issuance of a special class of stock and participation certificates between the date of adoption of a commencement resolution and the termination date. Your voting stockholders must approve the special class before you adopt the commencement resolution. The equities must comply with section 4.3A of the Act and be identical in all respects to existing classes of equities that are entitled to the residual assets of the institution in a liquidation, except for the value a holder will receive in a termination. In a termination, the holder of the special class of stock receives value equal to the lower of either par (or face) value, or the value calculated under § 611.1280(c) and (d). A holder must have the same right to vote (if the equity is held on the voting record date) and to dissent as holders of similar equities issued before the commencement resolution. If the termination does not occur, the special classes of stock and participation certificates must automatically convert into shares of the otherwise identical equities.

§ 611.1211 Special requirements.

(a) *Special assessments, analyses, studies, and rulings.* At any time after we receive your commencement resolution, and as we deem necessary or useful to evaluate your proposal, we may require you to engage independent experts, acceptable to us, to conduct assessments, analyses, or studies, or to request rulings, including, but not limited to:

(1) Assessments of fair value;

(2) Analyses and rulings on tax implications; and

(3) Studies of the effect of your proposal on equity holders (including the effect on holders in their capacity as borrowers), the System, and other parties.

(b) *Informational meetings.* After the advance notice, but before the stockholder vote, we may require you to hold regional or local informational meetings in convenient locations, at convenient times, and in a manner conducive to accommodating all equity holders that wish to attend, to discuss equity holder issues and answer questions. These meetings are subject to the plain language requirements of § 611.1217(b) regarding balanced statements.

§ 611.1215 Communications with the public and equity holders.

(a) *Communications after commencement resolution and before termination.* The terminating institution may communicate with equity holders and the public regarding the proposed termination, as long as written communications (other than non-public communications among participants, *i.e.*, persons or entities that are parties to a proposed corporate restructuring involving the successor institution, or their agents) made in connection with or relating to the proposed termination and any related transactions are filed in accordance with paragraph (c) of this section and the conditions in this section are satisfied.

(b) To rely on this section, you must include the following legend in each communication in a prominent location:

Equity holders should read the plan of termination that they have received or will receive (as appropriate) because it contains important information, including an enumerated statement of the anticipated benefits and potential disadvantages of the proposal.

(c) All your written communications and all written communications by your directors, employees, and agents in

connection with or relating to the proposed termination or any related transactions must be filed with us under this section on or before the date of first use.

(d) We will require you to correct communications that we deem are misleading or inaccurate.

(e) In addition to the filings we require under paragraph (c) of this section, we may require you to file timely any written communications you have knowledge of that are made by any other participants or their agents in connection with or related to the proposed termination or to any transaction related to the proposed termination.

(f) An immaterial or unintentional failure to file or a delay in filing a written communication described in this section will not result in a violation of this section, as long as:

(1) A good faith and reasonable effort was made to comply with the filing requirement; and

(2) The written communication is filed as soon as practicable after discovery of the failure to file.

(g) Communications that exist in electronic form must be filed electronically with the FCA as we direct. For communications that do not exist in electronic form, you must timely notify us by electronic mail and send us a copy by regular mail.

(h) You do not need to file a written communication that does not contain new or different information from that which you have previously publicly disclosed and filed under this section.

§ 611.1216 Public availability of documents related to the termination.

(a) We may post on our Web site, or require you to post on your Web site:

(1) Results of any special assessments, analyses, studies, and rulings required under § 611.1211;

(2) Documents you submit to us or file with us under § 611.1215; and

(3) Documents you submit to us under section 7.11 of the Act that are related directly or indirectly to the proposed termination, including but not limited to contracts entered into in connection with or relating to the proposed termination and any related transactions.

(b) We will not post confidential information on our Web site and will not require you to post it on your Web site.

(c) You may request that we treat specific information as confidential under the Freedom of Information Act, 5 U.S.C. 552 (*see* 12 CFR part, 602 subpart B). You should draft your request for confidential treatment narrowly to extend only to those portions of a document you consider to be confidential. If you request confidential treatment for information that we do not consider to be confidential, we may post that information on our Web site after providing notice to you. On our own initiative, we may determine that certain information should be treated as confidential and, if so, we will not make that information public.

§ 611.1217 Plain language requirements.

(a) *Plain language presentation.* All communications to equity holders required under §§ 611.1210, 611.1223, 611.1240, and 611.1280 must be clear, concise, and understandable. You must:

(1) Use short, explanatory sentences, bullet lists or charts where helpful, and descriptive headings and subheadings;

(2) Minimize the use of glossaries or defined terms;

(3) Write in the active voice when possible; and

(4) Avoid legal and highly technical business terminology.

(b) *Balanced statements.* Communications to equity holders that describe or enumerate anticipated benefits of the proposed termination should also describe or enumerate the potential disadvantages to the same degree of detail.

§ 611.1218 Role of directors.

(a) *Statements by directors.* Directors may not be prohibited by confidentiality agreements or otherwise from publicly or privately commenting orally or in writing on the termination proposal and related matters.

(b) *Directors' right to obtain independent advice.* One or more directors of a terminating institution or an institution that is considering terminating have the right to obtain independent legal and financial advice regarding the proposed termination and related transactions. The institution must pay for such advice and related expenses as are reasonable in light of the circumstances. A request by a director or directors for the institution to pay such expenses cannot be denied unless the board of directors, by at least a two-thirds vote of the full board (the total number of current directors), denies the request. The institution must act on any request in a timely manner. For any denial of payment, the board must provide notice to the FCA within 1 business day of the denial, fully document the reasons for such a denial, and ensure that the institution discloses the nature of the request and the reasons for any denial to the terminating institution's equity holders in the plan of termination.

§ 611.1219 Prohibited acts.

(a) *Statements about termination.* Neither the institution nor any director, officer, employee, or agent may make any untrue or misleading statement of a material fact, or fail to disclose any material fact, to the FCA or a current or prospective equity holder about the proposed termination and any related transactions.

(b) *Representations regarding FCA approval.* Neither the institution nor any director, officer, employee, or agent may make an oral or written representation to anyone that our approval of the plan of termination or the termination is, directly or indirectly, either a recommendation on the merits of the proposal or an assurance that the information you give to your equity holders is adequate or accurate.

§ 611.1220 Termination resolution.

No more than 1 week before you submit your plan of termination to us, your board of directors must adopt a termination resolution stating its support for terminating your status as a System institution and authorizing:

(a) Submission to us of a plan of termination and other required submissions that comply with § 611.1223; and

(b) Submission of the plan of termination to the voting stockholders if we approve the plan of termination under § 611.1230 or, if we take no action, after the end of our approval period.

§ 611.1221 Submission to FCA of plan of termination and disclosure information; other required submissions.

(a) *Filing.* Send us an original and five copies of the plan of termination, including the disclosure information, and other required submissions. You may not file the plan of termination until at least 30 days after you mail the equity holder notice under § 611.1210(b). If you send us the plan of termination in electronic form, you must send us at least one hard copy with original signatures.

(b) *Plan contents.* The plan of termination must include your equity holder disclosure information that complies with § 611.1223.

(c) *Other submissions.* You must also submit the following:

(1) A statement of how you will transfer assets to, and have your liabilities assumed by, the successor institution;

(2) A copy of the charter application for the successor institution, with any

exhibits or other supporting information; and

(3) A statement, if applicable, whether the successor institution will continue to borrow from a Farm Credit bank and how such a relationship will affect your provision for payment of debts. You must also provide evidence of any agreement and plan for satisfaction of outstanding debts.

§ 611.1223 Plan of termination—contents.

(a) *Disclaimer.* Place the following statement in boldface type in the material to be sent to equity holders, either on the notice of meeting or the first page of the plan of termination:

The Farm Credit Administration has not determined if this information is accurate or complete. You should not rely on any statement to the contrary.

(b) *Summary.* The first part of the plan of termination must be a summary that concisely explains:

(1) Which stockholders have a right to vote on the termination and related transactions;

(2) The material changes the termination will cause to the rights of borrowers and other equity holders;

(3) The effect of those changes;

(4) The anticipated benefits and potential disadvantages of the termination;

(5) The right of certain equity holders to dissent and receive payment for their existing equities; and

(6) The estimated termination date.

(7) If applicable, an explanation of any corporate restructuring that the successor institution expects to engage in within 18 months after the date of termination.

(c) *Remaining requirements.* You must also disclose the following information to equity holders:

(1) *Termination resolution.* Provide a certified copy of the termination resolution required under § 611.1220.

(2) *Plan of termination.* Summarize the plan of termination.

(3) *Benefits and disadvantages.* Provide an enumerated statement of the anticipated benefits and potential disadvantages of the termination.

(4) *Recommendation.* Explain the board's basis for recommending the termination.

(5) *Exit fee.* Explain the preliminary exit fee estimate, with any adjustments we require, and estimated expenses of termination and organization of the successor institution.

(6) *Initial board of directors.* List the initial board of directors and senior officers for the successor institution, with a brief description of the business experience of each person, including principal occupation and employment during the past 5 years.

(7) *Relevant contracts and agreements.* Include copies of all contracts and agreements related to the termination, including any proposed contracts in connection with the termination and subsequent operations of the successor institution. The FCA may, in its discretion, permit or require you to provide a summary or summaries of the documents in the disclosure information to be submitted to equity holders instead of copies of the documents.

(8) *Bylaws and charter.* Summarize the provisions of the bylaws and charter of the successor institution that differ materially from your bylaws and charter. The summary must state:

(i) Whether the successor institution will require a borrower to hold an equity interest as a condition for having a loan; and

(ii) Whether the successor institution will require equity holders to do business with the institution.

(9) *Changes to equity.* Explain any changes in the nature of equity investments in the successor institution, such as changes in dividends, patronage, voting rights, preferences, retirement of equities, and liquidation priority. If equities protected under section 4.9A of the Act are outstanding, the plan of termination must state that the Act's protections will be extinguished on termination.

(10) *Effect of termination on statutory and regulatory rights.* Explain the effect of termination on rights granted to equity holders by the Act and FCA regulations. You must explain the effect termination will have on borrower rights granted in the Act and part 617 of this chapter.

(11) *Loan refinancing by borrowers.*

(i) State, as applicable, that borrowers may seek to refinance their loans with the System institutions that already serve, or will be permitted to serve, your territory. State that no System institution is obligated to refinance your loans.

(ii) If we have assigned the chartered territory you serve to another System institution before the plan of termination is mailed to equity holders, or if another System institution is already chartered to make the same type of loans you make in the chartered territory, identify such institution(s) and provide the following information:

(A) The name, address, and telephone number of the institution; and

(B) An explanation of the institution's procedures for borrowers to apply for refinancing.

(iii) If we have not assigned the territory before you mail the plan of termination, give the name, address, and telephone number of the System institution specified by us and state that borrowers may contact the institution for information about loan refinancing.

(12) *Equity exchanges.* Explain the formula and procedure to exchange equity in your institution for equity in the successor institution.

(13) *Employment, retirement, and severance agreements.* Describe any employment agreement or arrangement between the successor institution and any of your senior officers or directors. Describe any severance and retirement plans that cover your employees or directors and state the costs you expect to incur under the plans in connection with the termination.

(14) *Final exit fee and its calculation.* Explain how the final exit fee will be calculated under § 611.1255 and how it will be paid.

(15) *New charter.* Describe the nature and type of financial institution the successor institution will be and any conditions of approval of the new chartering authority or regulator.

(16) *Differences in successor institution's programs and policies.* Summarize any differences between you and the successor institution on:

(i) Interest rates and fees;

(ii) Collection policies;

(iii) Services provided; and

(iv) Any other item that would affect a borrower's lending relationship with the successor institution, including whether a stockholder's ability to borrow from the institution will be restricted.

(17) *Capitalization.* Discuss expected capital requirements of the successor institution, and the amount and method of capitalization.

(18) *Sources of funding.* Explain the sources and manner of funding for the successor institution's operations.

(19) *Contingent liabilities.* Describe how the successor institution will address any contingent liability it will assume from you.

(20) *Tax status.* Summarize the differences in tax status between your institution and the successor institution, and explain how the differences may affect equity holders.

(21) *Regulatory environment.* Describe briefly how the regulatory environment for the successor institution will differ from your current regulatory environment, and any effect on the cost of doing business or the value of stockholders' equity.

(22) *Dissenters' rights.* Explain which equity holders are entitled to dissenters' rights and what those rights are. The

explanation must include the estimated liquidation value of the stock, procedures for exercising dissenters' rights, and a statement of when the rights may be exercised.

(23) *Financial information.*

(i) Present the following financial data:

(A) A balance sheet and income statement for each of the 3 preceding fiscal years;

(B) A balance sheet as of a date within 90 days of the date you send the plan of termination to us, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(C) An income statement for the interim period between the end of the last fiscal year and the date of the balance sheet required by paragraph (d)(23)(i)(B) of this section, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(D) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the date of the most recent balance sheet presented in the plan of termination; and

(E) A pro forma summary of earnings for the successor institution presented as if the termination had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented under paragraph (d)(23)(i)(D) of this section.

(ii) The format for the balance sheet and income statement must be the same as the format in your annual report and must contain appropriate footnote disclosures, including data on high-risk assets, other property owned, and allowance for losses.

(iii) The financial statements must include either:

(A) A statement signed by the chief executive officer and each board member that the various financial statements are unaudited but have been prepared in all material respects in conformity with GAAP (except as otherwise disclosed) and are, to the best of each signer's knowledge, a fair and accurate presentation of the financial condition of the institution; or

(B) A signed opinion by an independent certified public accountant that the various financial statements have been examined in conformity with generally accepted auditing standards and included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the institution in conformity with GAAP applied on a consistent basis, except as otherwise disclosed.

(24) *Subsequent financial events.* Describe any event after the date of the financial statements, but before the date you send the plan of termination to us, that would have a material impact on your financial condition or the condition of the successor institution.

(25) *Other subsequent events.* Describe any event after you send the plan of termination to us that could have a material impact on any information in the plan of termination.

(26) *Other material disclosures.* Describe any other material fact or circumstance that a stockholder would need to know to make an informed decision on the termination, or that is necessary to make the disclosures not misleading. We may require you to disclose any assessments, analyses, studies, or rulings we require under § 611.1211.

(27) *Ballot and proxy.* Include a ballot and proxy, with instructions on the purpose and authority for their use, and the proper method for the stockholder to sign the proxy.

(28) *Board of directors certification.* Include a certification signed by the entire board of directors as to the truth, accuracy, and completeness of the information contained in the plan of termination. If any director refuses to sign the certification, the director must inform us of the reasons for refusing.

(29) *Directors' statements.* You must include statements, if any, by directors regarding the proposed termination.

(d) *Requirement to provide updated information.* After you send us the plan of termination, you must immediately send us:

(1) Any material change to information in the plan of termination, including financial information, that occurs between the date you file the plan of termination and the termination date;

(2) Copies of any additional written information on the termination that you have given or give to current or prospective equity holders before termination; and

(3) A description of any subsequent event(s) that could have a material impact on any information in the plan of termination or on the termination.

§ 611.1230 FCA review and approval—plan of termination.

(a) *FCA review period.* No later than 60 days after we receive the plan of termination, we will review it and either approve or disapprove the plan for submission to your equity holders. If we take no action on the plan of termination within the 60 days, you may submit the plan to your equity holders. The 60-day review period under section 7.11 of the Act will begin on the date we receive a complete plan of termination. We will advise you in writing when the 60-day period begins.

(b) *FCA approval of the plan of termination.* Our approval of the plan of termination for submission to your equity holders:

(1) Is not our approval of the termination; and

(2) May be subject to any condition we impose.

§ 611.1235 Plan of termination—distribution.

(a) *Reaffirmation resolution.* Not more than 14 days before mailing the plan of termination to your equity holders, your board of directors must adopt a resolution reaffirming support of the termination. A certified copy of the resolution must be sent to us and must accompany the plan of termination when it is distributed to stockholders.

(b) *Notice of meeting and distribution of plan.* You must provide all equity holders with a notice of meeting and the plan of termination at least 45 days before the stockholder vote. You must also provide a copy of the plan to us when you provide it to your equity holders.

§ 611.1240 Voting record date and stockholder approval.

(a) *Stockholder meeting.* You must call the meeting by written notice in compliance with your bylaws. The stockholder meeting to vote on the termination must occur at least 60 days after our approval of the plan of termination (or, if we take no action, at least 60 days after the end of our approval period).

(b) *Voting record date.* The voting record date may not be more than 70 days before the stockholders' meeting.

(c) *Quorum requirement for termination vote.* At least 30 percent, unless your bylaws provide for a higher quorum, of the voting stockholders of the institution must be present at the meeting either in person or by proxy in order to hold the vote on the termination.

(d) *Approval requirement.* The affirmative vote of a majority of the voting stockholders of the institution present and voting or voting by proxy at the duly authorized meeting at which a quorum is present as prescribed in paragraph (c) of this section is required for approval of the termination.

(e) *Voting procedures.* The voting procedures must comply with §§ 611.330 and 611.340. You must have

an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

(f) *Notice to FCA and equity holders of voting results.* Within 10 days of the termination vote, you must send us a certified record of the results of the vote. You must notify all equity holders of the results within 30 days after the stockholder meeting. If the stockholders approve the termination, you must give the following information to equity holders:

(1) Stockholders who voted against termination and equity holders who were not entitled to vote have a right to dissent as provided in § 611.1280; and

(2) Voting stockholders have a right, under § 611.1245, to file a petition with the FCA for reconsideration within 35 days after the date you mail to them the notice of the results of the termination vote.

(g) *Requirement to notify new equity holders.* You must provide the information described in paragraph (f)(1) of this section to each person that becomes an equity holder after the termination vote and before termination.

§ 611.1245 Stockholder reconsideration.

(a) *Right to reconsider termination.* Voting stockholders have the right to reconsider their approval of the termination if a petition signed by at least 15 percent of the voting stockholders is filed with us within 35 days after you mail notices to stockholders that the termination was approved. If we determine that the petition complies with the requirements of section 7.9 of the Act, you must call a special stockholders' meeting to reconsider the vote. The meeting must occur within 60 days after the date on which you mailed to stockholders the results of the termination vote.

(b) *Quorum requirement for termination reconsideration vote.* At least 30 percent, unless your bylaws provide for a higher quorum, of the voting stockholders of the institution must be present at the stockholders' meeting either in person or by proxy in order to hold the reconsideration vote. If a majority of the voting stockholders voting in person or by proxy vote against the termination, the termination may not take place.

(c) *Stockholder list and expenses.* You must, at your expense, timely give stockholders who request it a list of the names and addresses of stockholders eligible to vote in the reconsideration vote. The petitioners must pay all other expenses for the petition. You must pay expenses that you incur for the reconsideration vote.

§ 611.1246 Filing of termination application and its contents.

(a) *Filing of termination application.* Send us your termination application no later than 90 days after you send us notice of the stockholder vote approving the termination. Please send us an original and five copies of the termination application for review and approval. If you send us the termination application in electronic form, you must send us at least one hard copy with original signatures.

(b) *Contents of termination application.* The application must contain:

(1) A certified copy of the termination and reaffirmation resolutions;

(2) A certification signed by the board of directors that the board continues to support the termination, there has been no material change to any of the information contained in the plan of termination or information statement after the FCA approved the plan of termination, and there have not been any subsequent events that could have a material impact on any of the information in the plan of termination or the termination; and

(3) Any additional information that is required under this subpart, that we request or that your board of directors wishes to submit in support of the application.

§ 611.1247 FCA review and approval—termination.

(a) *FCA action on application.* After we receive the termination application, we will review it and either approve or disapprove the termination.

(b) *Basis for disapproval.* We will disapprove the termination if we determine that there are one or more appropriate reasons for disapproval consistent with our authorities under the Act and our regulations. We will inform you of our reason(s) for disapproval in writing.

(c) *Conditions of FCA approval.* We will approve your termination application only if:

(1) Your stockholders have voted in favor of termination in the termination vote and in any reconsideration vote;

(2) You have given us executed copies of all contracts, agreements, and other documents submitted under §§ 611.1221 and 611.1223;

(3) You have paid or made adequate provision for payment of debts, including responsibility for any contingent liabilities, and for retirement of equities;

(4) A Federal or State chartering authority has granted a new charter to the successor institution;

(5) You deposit into escrow an amount equal to 110 percent of the estimated exit fee plus 110 percent of the estimated amount you must pay to retire equities of dissenting stockholders and Farm Credit institutions, as described in § 611.1255(c); and

(6) You have fulfilled any condition of termination we impose.

(d) *Effective date of termination.* If we approve the termination, we will revoke your charter, and the termination will be effective on the date that we provide, but no earlier than the last to occur of:

(1) Fulfillment of all conditions listed in or imposed under paragraph (c) of this section;

(2) Your proposed termination date;

(3) Ninety (90) days after we receive your termination application described in § 611.1246; or

(4) Fifteen (15) days after any reconsideration vote.

§ 611.1250 Preliminary exit fee estimate.

(a) *Preliminary exit fee estimate—terminating association.* You must provide a preliminary exit fee estimate to us when you submit the plan of termination under § 611.1221. Calculate the preliminary exit fee estimate in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period as of the quarter end immediately before the date you send us your plan of termination.

(2) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your plan of termination, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter. We may, in our discretion, waive the audit requirement if an independent audit was performed as of a date less than 6 months before you submit the plan of termination.

(4) Make adjustments to assets as follows:

(i) Add back expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, equity holder meetings, and

application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(ii) Subtract the dollar amount of estimated current and deferred tax expenses, if any, due to the termination.

(iii) Add the dollar amount of estimated current and deferred tax benefits, if any, due to the termination.

(iv) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your plan of termination and date of termination. Examples of these transactions include, but are not limited to, gains or losses on the sale of assets, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(5) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your preliminary total capital for purposes of termination.

(8) Multiply assets as adjusted above by 6 percent, and subtract this amount from preliminary total capital. This is your preliminary exit fee estimate.

(b) *Preliminary exit fee estimate—terminating bank.*

(1) Affiliated associations that are terminating with you must calculate their individual preliminary exit fee estimates as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period as of the quarter end immediately before the date you send us your plan of termination.

(3) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your plan of termination, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter. We may, in our discretion, waive this requirement if an independent audit was performed as of a date less than 6 months before you submit the plan of termination.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back to assets the following:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(B) Any specific allowance for losses, and a pro rata portion of any general allowance for loan losses, on direct loans to associations that you do not expect to incur before or at termination.

(ii) Subtract from your assets and liabilities an amount equal to your direct loans to your affiliated associations that are not terminating.

(iii) Subtract the following from assets:

(A) Equity investments in your institution that are held by nonterminating associations and that you expect to transfer to another System bank before or at termination. A nonterminating association's investment consists of purchased equities, allocated equities, and a share of the bank's unallocated surplus calculated in accordance with the bank's bylaw provisions on liquidation. We may require a different calculation method for the unallocated surplus if we determine that using the liquidation provision would be inequitable to stockholders; and

(B) The dollar amount of estimated current and deferred tax expenses, if any, due to the termination.

(iv) Add the dollar amount of current and deferred estimated tax benefits, if any, due to the termination.

(v) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(vi) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your plan of termination and date of termination. Examples of these transactions include, but are not limited to, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After the above adjustments, combine your balance sheet with the balance sheets of your terminating associations after they have made the adjustments required in paragraph (a) of this section. Subtract liabilities from assets. This is your preliminary total capital estimate for purposes of termination.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the preliminary total capital estimate of the combined balance sheet. The remainder is the preliminary exit fee estimate of the bank and terminating affiliated associations.

(9) Your preliminary exit fee estimate is the amount by which the preliminary exit fee estimate for the combined entity exceeds the total of the individual preliminary exit fee estimates of your affiliated terminating associations.

(c) *Adjustments.*

(1) We will review your account balances, transactions over the 3 years before the date of the termination resolution under § 611.1220, and any subsequent transactions. Our review will include, but not be limited to, the following:

(i) Additions to or subtractions from any allowance for losses;

(ii) Additions to assets or liabilities, or subtractions from assets or liabilities, due to transactions that are outside your ordinary course of business;

(iii) Dividends or patronage refunds exceeding your usual practices;

(iv) Changes in the institution's capital plan, or in implementing the plan, that increased or decreased the level of borrower investment;

(v) Contingent liabilities, such as loss-sharing obligations, that can be reasonably quantified; and

(vi) Assets, including real property and servicing rights, that may be overvalued, undervalued, or not recorded on your books.

(2) If we determine the account balances do not accurately show the value of your assets and liabilities (whether the assets and liabilities were booked before or during the 3-year look-

back adjustment period), we will make any adjustments we deem necessary.

(3) We may require you to reverse the effect of a transaction if we determine that:

(i) You have retired capital outside the ordinary course of business;

(ii) You have taken any other actions unrelated to your core business that have the effect of changing the exit fee; or

(iii) You incurred expenses related to termination prior to the 12-month average daily balance period on which the exit fee calculation is based.

(4) We may require you to make these adjustments to the preliminary exit fee estimate that is disclosed in the information statement, the final exit fee calculation, and the calculations of the value of equities held by dissenting stockholders, Farm Credit institutions that choose to have their equities retired at termination, and reaffiliating associations.

§ 611.1255 Exit fee calculation.

(a) *Final exit fee calculation—terminating association.* Calculate the final exit fee in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (a)(4)(ii) and (iii) of this section.

(2) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter.

(4) Make adjustments to assets and liabilities as follows:

(i) Add back expenses related to the termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(ii) Subtract from assets the dollar amount of current and deferred tax expenses, if any, due to the termination.

(iii) Add to assets the dollar amount of current and deferred tax benefits, if any, due to the termination.

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(5) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your total capital for purposes of termination.

(6) Multiply assets by 6 percent, and subtract this amount from total capital. This is your final exit fee.

(b) *Final exit fee calculation—terminating bank.*

(1) The individual exit fees of affiliated associations that are terminating with you must be calculated as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (b)(5)(iii)(B) and (b)(5)(iv) of this section.

(3) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as ''dollar amount.''

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant, as defined in § 621.2(i) of this chapter.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back the following to your assets:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(B) Any specific allowance for losses, and a pro rata share of any general allowance for losses, on direct loans to associations that are paid off or transferred before or at termination.

(ii) Subtract from your assets and liabilities your direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination or at termination.

(iii) Subtract from your assets the following:

(A) Equity investments held in your institution by affiliated associations that you transferred at termination or during the 12 months before termination; and

(B) The dollar amount of current and deferred tax expenses, if any, due to the termination;

(iv) Add to assets, the dollar amount of estimated current and deferred tax benefits, if any, due to the termination.

(v) Subtract from liabilities any liability that we treat as regulatory capital (or that we do not treat as a liability) under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(vi) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(6) After the above adjustments, combine your balance sheet with the balance sheets of terminating associations after making the adjustments required in paragraph (a) of this section.

(7) Subtract combined liabilities from combined assets. This is the total capital of the combined balance sheet.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the total capital of the combined balance sheet. This amount is the combined final exit fee for your institution and the terminating affiliated associations.

(9) Your final exit fee is the amount by which the combined final exit fee exceeds the total of the individual final exit fees of your affiliated terminating associations.

(c) *Payment of exit fee.* On the termination date, you must:

(1) Deposit into an escrow account acceptable to us and the FCSIC an

amount equal to 110 percent of the preliminary exit fee estimate, adjusted to account for stock retirements to dissenting stockholders and Farm Credit institutions, and any other adjustments we require.

(2) Deposit into an escrow account acceptable to us an amount equal to 110 percent of the equity you must retire for dissenting stockholders and System institutions holding stock that would be entitled to a share of the remaining assets in a liquidation.

(d) *Pay-out of escrow.* Following the independent audit of the institution's account balances as of the termination date, we will determine the amount of the final exit fee and the amounts owed to stockholders to retire their equities. We will then direct the escrow agent to:

(1) Pay the exit fee to the Farm Credit Insurance Fund;

(2) Pay the amounts owed to dissenting stockholders and Farm Credit institutions; and

(3) Return any remaining amounts to the successor institution.

(e) *Additional payment.* If the amount held in escrow is not enough to pay the amounts under paragraph (d)(1) and (d)(2) of this section, the successor institution must pay any remaining liability to the escrow agent for distribution to the appropriate parties. The termination application must include evidence that, after termination, the successor institution will pay any remaining amounts owed.

§ 611.1260 Payment of debts and assessments—terminating association.

(a) *General rule.* If your institution is a terminating association, you must pay or make adequate provision for the payment of all outstanding debt obligations and assessments.

(b) *No OFI relationship.* If the successor institution will not become an OFI, you must either:

(1) Pay debts and assessments owed to your affiliated Farm Credit bank at termination; or

(2) With your affiliated Farm Credit bank's concurrence, arrange to pay any obligations or assessments to the bank after termination.

(c) *Obligations to other Farm Credit institutions.* You must pay or make adequate provision for payment of obligations to any Farm Credit institution (other than your affiliated bank) under any loss-sharing or other agreement.

§ 611.1265 Retirement of a terminating association's investment in its affiliated bank.

(a) *Safety and soundness restrictions.* Notwithstanding anything in this subpart to the contrary, we may prohibit a bank from retiring the equities you hold in the bank if the retirement would cause the bank to fall below its regulatory capital requirements after retirement, or if we determine that the bank would be in an unsafe or unsound condition after retirement.

(b) *Retirement agreement.* Your affiliated bank may retire the purchased and allocated equities held by your institution in the bank according to the terms of the bank's capital revolvement plan or an agreement between you and the bank.

(c) *Retirement in absence of agreement.* Your affiliated bank must retire any equities not subject to an agreement or revolvement plan no later than when you or the successor institution pays off your loan from the bank.

(d) *No retirement of unallocated surplus.* When your bank retires equities you own in the bank, the bank must pay par or face value for purchased and allocated equities, less any impairment. The bank may not pay you any portion of its unallocated surplus.

(e) *Exclusion of equities from capital ratios.* If another Farm Credit institution makes an agreement to retire equities you hold in that institution after termination, we may require that institution to exclude part or all of those equities from assets and capital when the institution calculates its capital and net collateral ratios under subparts H and K of part 615 of this chapter.

§ 611.1270 Repayment of obligations—terminating bank.

(a) *General rule.* If your institution is a terminating bank, you must pay or make adequate provision for the payment of all outstanding debt obligations, and provide for your responsibility for any probable contingent liabilities identified.

(b) *Satisfaction of primary liability on consolidated or System-wide obligations.* After consulting with the other Farm Credit banks, the Funding Corporation, and the FCSIC, you must pay or make adequate provision for payment of your primary liability on consolidated or System-wide obligations in a method that we deem acceptable. Before we make a final decision on your proposal and as we deem necessary, we may consult with the other Farm Credit banks, the Funding Corporation, and the FCSIC.

(c) *Satisfaction of joint and several liability and liability for interest on individual obligations.*

(1) You and the other Farm Credit banks must enter into an agreement, which is subject to our approval, covering obligations issued under section 4.2 of the Act and outstanding on the termination date. The agreement must specify how you and your successor institution will make adequate provision for the payment of your joint and several liability to holders of obligations other than those obligations on which you are primarily liable, in the event we make calls for payment under section 4.4 of the Act. You and your successor institution must also provide for your liability under section 4.4(a)(1) of the Act to pay interest on the individual obligations issued by other System banks. As a part of the agreement, you must also agree that your successor institution will provide ongoing information to the Funding Corporation to enable it to fulfill its funding and disclosure duties. The Funding Corporation may, at its option, be a party to the agreement to the extent necessary to fulfill its duties with respect to financing and disclosure.

(2) If you and the other Farm Credit banks are unable to reach agreement within 90 days before the proposed termination date, we will specify the manner in which you will make adequate provision for the payment of the liabilities in question and how we will make joint and several calls for those obligations outstanding on the termination date.

(3) Notwithstanding any other provision in these regulations, the successor institution will be jointly and severally liable for consolidated and System-wide debt outstanding on the termination date (other than the obligations on which you are primarily liable). The successor institution will also be liable for interest on other banks' individual obligations as described in section 4.4(a)(1) of the Act and outstanding on the termination date. The termination application must include evidence that the successor institution will continue to be liable for consolidated and System-wide debt and for interest on other banks' individual obligations.

§ 611.1275 Retirement of equities held by other System institutions.

(a) *Retirement at option of equity holder.* If your institution is a terminating institution, System institutions that own your equities have the right to require you to retire the equities on the termination date.

(b) *Value of equity holders' interests.* You must retire the equities in accordance with the liquidation provisions in your bylaws unless we determine that the liquidation provisions would result in an

inequitable distribution to stockholders. If we make such a determination, we will require you to distribute the equity in accordance with another method that we deem equitable to stockholders. Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the financial statements on the termination date:

(1) Make deductions for any taxes due to the termination that have not yet been recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(c) *Transfer of affiliated association's investment.* As an alternative to equity retirement, an affiliated association that reaffiliates with another Farm Credit bank instead of terminating with its bank has the right to require the terminating bank to transfer its investment to its new affiliated bank when it reaffiliates. If your institution is a terminating bank, at the time of reaffiliation you must transfer the purchased and allocated equities held by the association, as well as its share of unallocated surplus, to the new affiliated bank. Calculate the association's share before deduction of the exit fee as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date) in accordance with the liquidation provisions of your bylaws, unless we determine that the liquidation provisions would result in an inequitable distribution. If we make such a determination, we will require you to distribute the association's share of your unallocated surplus in accordance with another method that we deem equitable to stockholders. Before you distribute any unallocated surplus, you must make the following adjustments to stockholder equity as stated in the financial statements as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date):

(1) Add back any taxes due to the termination, and the exit fee; and

(2) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(d) *Prohibition on certain affiliations.* No Farm Credit institution may retain an equity interest otherwise prohibited by law in a successor institution

§ 611.1280 Dissenting stockholders' rights.

(a) *Definition.* A dissenting stockholder is an equity holder (other than a System institution) in a terminating institution on the termination date who either:

(1) Was eligible to vote on the termination resolution and voted against termination;

(2) Was an equity holder on the voting record date but was not eligible to vote; or

(3) Became an equity holder after the voting record date.

(b) *Retirement at option of a dissenting stockholder.* A dissenting stockholder may require a terminating institution to retire the stockholder's equity interest in the terminating institution.

(c) *Value of a dissenting stockholder's interest.* You must pay a dissenting stockholder according to the liquidation provision in your bylaws, except that you must pay at least par or face value for eligible borrower stock (as defined in section 4.9A(d)(2) of the Act). If we determine that the liquidation provision is inequitable to stockholders, we will require you to calculate their share in accordance with another formula that we deem equitable.

(d) *Calculation of interest of a dissenting stockholder.* Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the financial statements on the termination date:

(1) Deduct any taxes due to the termination that you have not yet recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(e) *Form of payment to a dissenting stockholder.* You must pay dissenting stockholders for their equities as follows:

(1) Pay cash for the par or face value of purchased stock, less any impairment;

(2) For equities other than purchased equities, you may:

(i) Pay cash;

(ii) Cause or otherwise provide for the successor institution to issue, on the date of termination, subordinated debt to the stockholder with a face value equal to the value of the remaining equities. This subordinated debt must have a maturity date of 7 years or less, must have priority in liquidation ahead of all equity, and must carry a rate of interest not less than the rate (at the time of termination) for debt of comparable maturity issued by the U.S. Treasury plus 1 percent; or

(iii) Provide for a combination of cash and subordinated debt as described above.

(f) *Payment to holders of special class of stock.* If you have adopted bylaws under § 611.1210(f), you must pay a dissenting stockholder who owns shares of the special class of stock an amount equal to the lower of the par (or face) value or the value of such stock as determined under § 611.1280(c) and (d).

(g) *Notice to equity holders.* The notice to equity holders required in § 611.1240(f) must include a form for stockholders to send back to you, stating their intention to exercise dissenters' rights. The notice must contain the following information:

(1) A description of the rights of dissenting stockholders set forth in this section and the approximate value per share that a dissenting stockholder can expect to receive. State whether the successor institution will require borrowers to be stockholders or whether it will require stockholders to be borrowers.

(2) A description of the current book and par value per share of each class of equities, and the expected book and market value of the stockholder's interest in the successor institution.

(3) A statement that a stockholder must return the enclosed form to you within 30 days if the stockholder chooses to exercise dissenters' rights.

(h) *Notice to subsequent equity holders.* Equity holders that acquire their equities after the termination vote must also receive the notice described in paragraph (g) of this section. You must give them at least 5 business days to decide whether to request retirement of their stock.

(i) *Reconsideration.* If a reconsideration vote is held and the termination is disapproved, the right of stockholders to exercise dissenters' rights is rescinded. If a reconsideration vote is held and the termination is approved, you must retire the equities of dissenting stockholders as if there had been no reconsideration vote.

§ 611.1285 Loan refinancing by borrowers.

(a) *Disclosure of credit and loan information.* At the request of a borrower seeking refinancing with another System institution before you terminate, you must give credit and loan information about the borrower to such institution.

(b) *No reassignment of territory.* If, at the termination date, we have not assigned your territory to another System institution, any System institution may lend in your territory, to the extent otherwise permitted by the Act and the regulations in this chapter.

§ 611.1290 Continuation of borrower rights.

You may not require a waiver of contractual borrower rights provisions as a condition of borrowing from and owning equity in the successor institution. Institutions that become other financing institutions on termination must comply with the applicable borrower rights provisions in the Act and part 617 of this chapter.

Dated: July 27, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

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