

SUBCHAPTER B—FARM CREDIT SYSTEM

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SOURCE: 37 FR 11415, June 7, 1972, unless otherwise noted.

Subparts A–B [Reserved]

Subpart C—Election of Directors and Other Voting Procedures

SOURCE: 53 FR 50392, Dec. 15, 1988, unless otherwise noted.

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§ 611.310 Eligibility for membership on bank and association boards and subsequent employment.

(a) No person shall be eligible for membership on a bank or association board who is or has been, within 1 year preceding the date the term of office begins, a salaried officer or employee of any bank or association in the System.

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is convicted of a felony or held liable in damages for fraud.

(c) No bank director shall, within 1 year after the date when he or she ceases to be a member of the board, serve as a salaried officer or employee of such bank, or any association with which the bank has a discount or agent relationship.

(d) No director of an association shall, within 1 year after he or she ceases to be a member of the board, serve as a salaried officer or employee of such association.

[53 FR 50392, Dec. 15, 1988, as amended at 54 FR 37095, Sept. 7, 1989]

§ 611.320 Impartiality in the election of directors.

(a) Each System institution shall adopt policies and procedures that are designed to assure that the elections of board members are conducted in an impartial manner.

(b) No employee or agent of a System institution shall take any part, directly or indirectly, in the nomination or election of members to the board of directors of a System institution, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such nominations, or elections. This paragraph shall not prohibit employees or agents from providing biographical and other similar information or engaging in other activities pursuant to policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution in which the employee or agent is a voting member.

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(c) No property, facilities, or resources of any System institution shall be used by any candidate for nomination or election or by any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates.

(d) No director, employee, or agent of a System institution shall, for the purpose of furthering the interests of any candidates for nomination or election, furnish or make use of records that are not made available for use by all declared candidates.

(e) No System institution shall distribute or mail either directly or at the expense of the institution, any campaign materials for director candidates. Institutions shall request biographical information from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

§ 611.330 Confidentiality in voting.

(a) No bank or association may use signed ballots in stockholder votes. Each bank and association must adopt policies and procedures to ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including with respect to the institution, its directors, stockholders, or employees, or any other person except:

(1) An independent third party tabulating the vote; or

(2) The Farm Credit Administration.

(b) A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an

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individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration if requested.

(c) Once a bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting.

(d) A bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

[63 FR 64843, Nov. 24, 1998]

§ 611.340 Security in voting.

(a) Each bank and association must adopt policies and procedures that assure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(b) Bank and association procedures must assure that ballots and proxy ballots are provided only to stockholders who are eligible to vote.

(c) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. In an election of directors, ballots, proxy ballots and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(d) The voting procedures of each institution must provide for the establishment of a tellers committee or other designated group of persons which must be responsible for validating ballots and proxies and tabulating voting results. An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or other designated persons have validated the results of the vote.

[53 FR 50392, Dec. 15, 1988, as amended at 63 FR 64843, Nov. 24, 1998]

§ 611.350 Application of cooperative principles to the election of directors.

In the election of directors, each System institution shall comply with the applicable cooperative principles set forth in § 615.5230 of this chapter.

[63 FR 39225, July 22, 1998]

Subpart D—Rules for Compensation of Board Members

§ 611.400 Compensation of bank board members.

(a) Farm Credit System banks are authorized to pay fair and reasonable compensation to directors for services performed in an official capacity at a rate not to exceed the level established in section 4.21 of the Farm Credit Act of 1971, as amended, unless the FCA determines that such a level adversely affects the safety and soundness of the institution.

(b) The bank director compensation level established in section 4.21 of the Act shall be adjusted to reflect changes in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics, in the following manner: Current year's maximum compensation = Prior year's maximum compensation adjusted by the prior year's annual average percent change in the CPI for all urban consumers. Adjustments will be made to the bank director statutory compensation limit beginning from October 28, 1992 (the date of enactment of the Farm Credit Banks and Associations Safety and Soundness Act of 1992). Additionally, each year the FCA will distribute a booklet to all FCS banks that communicates the CPI adjusted bank director statutory compensation limit.

(c)(1) A Farm Credit bank is authorized to pay a director up to 30 percent more than the statutory compensation limit in exceptional circumstances where the director contributes extraordinary time and effort in the service of the bank and its shareholders.

(2) Banks must document the exceptional circumstances justifying additional director compensation. The documentation must describe:

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(i) The exceptional circumstances justifying the additional director compensation, including the extraordinary time and effort the director devoted to bank business; and

(ii) The amount and the terms and conditions of the additional director compensation.

(d) Each bank board shall adopt a written policy regarding compensation of bank directors. The policy shall address, at a minimum, the following areas:

(1) The activities or functions for which attendance is necessary and appropriate and may be compensated, except that a Farm Credit System bank shall not compensate any director for rendering services on behalf of any other Farm Credit System institution or a cooperative of which the director is a member, or for performing other assignments of a non-official nature;

(2) The methodology for determining each director's rate of compensation; and

(3) The exceptional circumstances under which the board would pay additional compensation for any of its directors as authorized by paragraph (c) of this section.

(e) Directors may also be reimbursed for reasonable travel, subsistence, and other related expenses in accordance with the policy adopted pursuant to §618.8270 of this chapter.

[59 FR 37411, July 22, 1994, as amended at 64 FR 16618, Apr. 6, 1999]

Subpart E—Transfer of Authorities

SOURCE: 53 FR 50393, Dec. 15, 1988, unless otherwise noted.

§611.500 General.

Each Farm Credit Bank or Agricultural Credit Bank is authorized, in accordance with section 7.6 of the Act, to transfer certain authorities to Federal land bank associations. The regulations in this subpart set forth the procedures and voting and approval requirements applicable to such transfers.

§611.501 Procedures.

(a) The boards of directors of a bank and an association which seek to trans-

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fer authorities may adopt appropriate resolutions approving such transfer and providing for the submission of such a proposal to their respective stockholders for a vote.

(b) The resolutions accompanied by the following information shall be submitted to the Farm Credit Administration for review and approval:

(1) Any proposed amendments to the charters of the institutions;

(2) A copy of the transfer plan as required under §611.520 of this part;

(3) An information statement that complies with the requirements of §611.515;

(4) The proposed bylaws of the bank and the association, as applicable; and

(5) Any additional information the boards of directors wish to submit in support of the request or that the Farm Credit Administration requests.

§611.505 Farm Credit Administration review.

(a) Upon receipt of the board of directors resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the bank and the association who shall promptly notify their respective boards of directors.

(c) Upon approval of the proposed transfer of authorities by the stockholders as provided in §611.510, the secretary of the bank and the secretary of the association shall forward to the Farm Credit Administration a certified record of the results of the stockholder votes.

(d) Each institution shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. If no petition for reconsideration is filed with the Farm Credit Administration in accordance with §611.525, the transfer shall be effective on the date specified in the transfer plan, or at such later date as may be required by the Farm Credit Administration to grant final approval. Notice of final approval shall be transmitted to the institutions involved.

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(e) The effective date of a transfer may not be less than 35 days after mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

[53 FR 50393, Dec. 15, 1988, as amended at 63 FR 64844, Nov. 24, 1998]

§611.510 Approval procedures.

(a) Upon receipt of approval of a resolution by the Farm Credit Administration, the bank and the association shall call a meeting of their voting stockholders. Each institution shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the institution's bylaws. The stockholders meeting of the bank and the association shall be held within 60 days of receipt of the approval from the Farm Credit Administration.

(b) The notice of meeting to consider and act upon the directors' resolution shall be accompanied by an information statement that complies with the requirements of §611.515.

(c) The proposal shall be approved if agreed to by:

(1) A majority of the stockholders of the bank voting in person or by proxy, with each association entitled to cast a number of votes equal to the number of its voting stockholders;

(2) A majority of the stockholders of the association voting, in person or by proxy;

(3) The Farm Credit Administration.

§611.515 Information statement.

(a) The bank and association shall prepare an information statement which will inform stockholders about

the provisions of the proposed transfer of authorities and the effect of the proposal on the bank and the association.

(b) The information statement for each institution involved shall contain the following materials as applicable to the institution:

(1) A statement either on the first page of the materials or on the notice of the stockholders meeting, in capital letters and boldface type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the plan under §611.520 and the effect of the transaction on the institution, its stockholders, and the territory to be served.

(3) A statement enumerating the potential advantages and disadvantages of the proposed transfer including, but not limited to, changes in operating efficiencies, one-stop service, branch offices, local control, and financial condition.

(4) A summary of the provisions of the charter and bylaws following the transfer that differ materially from the charter or bylaws currently existing.

(5) A brief statement by the board of directors of the institution setting forth the board's opinion on the advisability of the transfer.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the bank or the association, as applicable, for the preceding 2 fiscal years.

(ii) If the transfer of authority includes any material transfer of assets, a balance sheet and income statement of the bank and the association showing its financial condition before the transfer of authority and a pro forma balance sheet and income statement for the bank or association, as applicable, showing its financial condition after the transfer. The statements shall meet the following conditions:

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(A) Such financial statements shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the institution, and operating results since the end of the last fiscal year through the end of the most recent quarter of the institution.

(B) If the request is made within 90 days after the end of the fiscal year, the institution's financial statements shall be as of the most recent fiscal yearend.

(C) If the request is made within 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, describing any assets being transferred and including data relating to high-risk assets and other property owned, allowance for loan losses, and current year-to-date chargeoffs.

(F) The amount and nature of start-up costs estimated to be associated with the transfer.

(7) A description of the type and dollar amount of any financial assistance that has been provided to the bank or the association, as applicable, during the past year; the conditions on which the financial assistance was extended, the terms of repayment or retirement, if any; and, the liability for repayment of this assistance by the bank or the association if the transfer were approved.

(8) A statement as to whether the bank or the association, as applicable, would require financial assistance during the first 3 years of operation, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation of the association's interest rate and fee programs,

interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of the bank or the association.

(12) A statement of any other material fact or circumstances that a stockholder would need in order to make an informed and responsible decision, or that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy, together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of transfer provided for in § 611.520 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a transfer under this subpart.

[53 FR 50393, Dec. 15, 1988, as amended at 58 FR 48790, Sept. 20, 1993]

§ 611.520 Plan of transfer.

The transfer of authorities and assets, as appropriate, shall occur pursuant to a written plan which shall be agreed to by the bank and the association involved. The written plan shall include the following:

(a) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the bank and the association and the impact, if any, of the transfer on the value of that equity.

(b) If the plan provides for a transfer of assets, a description of the terms and conditions upon which such transfer will occur, including, but not limited to, any warranties or representations regarding the value of such assets.

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(c) A description of how the association would obtain loan funds after the transfer.

(d) A statement on how the expenses connected with the transfer are to be borne by the affected parties.

(e) A statement of any conditions which must be satisfied prior to the effective date of the transfer, including but not limited to approval by stockholders and approval by the Farm Credit Administration.

(f) A statement that prior to the effective date of the transfer the board of directors of the bank or the association may rescind its resolution and void the transfer, with the concurrence of the Farm Credit Administration, on the basis that:

(1) The information disclosed to stockholders contained material errors or omissions;

(2) Material misrepresentations were made to stockholders regarding the impact of the transfer;

(3) Fraudulent activities were used to obtain the stockholders' approval; or,

(4) An event occurred between the time of the vote and the transfer that would have a significant adverse impact on the future viability of the association.

(g) A designation of those persons who have authority to carry out the plan of transfer, including the authority to execute any documents necessary to perfect title, on behalf of the bank and the association.

§611.525 Stockholder reconsideration.

(a) Stockholders have the right to reconsider the approval of the transfer provided that a petition signed by 15 percent of the stockholders of either institution involved in the transfer is filed with the Farm Credit Administration within 35 days after the date of mailing of the notification of the final results of the stockholder vote required under §611.505(d) and such petition is approved by the Farm Credit Administration.

(b) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the transfer. If a majority of stockholders of any institution in-

volved in the transfer votes against the transfer, the transfer is not approved.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

SOURCE: 53 FR 50393, Dec. 15, 1988, unless otherwise noted.

§611.1000 General authority.

(a) An amendment to a bank charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the bank, the location of its offices, or the territory served.

(b) The Farm Credit Administration may make changes in the charter of a bank as may be requested by that bank and approved by the Farm Credit Administration pursuant to §611.1010 of this part.

(c) The Farm Credit Administration may, in accordance with the provisions of the Act, make changes in the charter of a bank as may be necessary or expedient to implement the provisions of the Act.

§611.1010 Bank charter amendment procedures.

(a) A bank may recommend a charter amendment to accomplish any of the following actions:

(1) A merger or consolidation with any other bank or banks operating under title I or III of the Act;

(2) A transfer of territory with any other bank operating under the same title of the Act;

(3) A change to its name or location;

(4) Any other change that is properly the subject of a bank charter;

(b) Upon approval of an appropriate resolution by the bank board, the certified resolution, together with supporting documentation, shall be submitted to the Farm Credit Administration for preliminary or final approval, as the case may be.

(c) The Farm Credit Administration shall review the material submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate. If the request is for merger, consolidation, or transfer of territory,

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the approval of Farm Credit Administration will be preliminary only, with final approval subject to a vote of the bank's stockholders.

(d) Following receipt of the Farm Credit Administration's written preliminary approval, the proposal shall be submitted for approval to the voting stockholders of the bank. A proposal shall be approved if agreed to by a majority of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholder meeting with each association entitled to cast a number of votes equal to the number of the association's voting shareholders.

(e) Upon approval by the stockholders of the bank, the request for final approval and issuance of the appropriate charter or amendments to charter for the banks involved shall be submitted to the Farm Credit Administration.

§611.1020 Requirements for mergers or consolidations of banks.

(a) As authorized under sections 7.0 and 7.12 of the Act, a bank may merge or consolidate with one or more banks operating under the same or different titles of the Act.

(b) Where two or more banks plan to merge or consolidate, the banks shall jointly submit to the Farm Credit Administration the documents itemized in §§611.1122(a)(1) through (4), (6), (7), 611.1122(e), and 611.1123. In interpreting those sections, the word "bank" shall be read for the word "association."

(c) No bank director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to any stockholder of the bank in connection with a bank merger or consolidation.

(d) Upon approval of a proposed bank merger or consolidation by the stockholders of each constituent bank, the following documents shall be submitted from the constituent banks to the Farm Credit Administration for final approval and issuance of the appropriate charters or amendments to charter:

(1) A certified copy of the stockholders' resolution, on which the

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stockholders cast their votes, from each constituent bank;

(2) A certification of the stockholder vote from the corporate secretary of each bank or from an independent third party;

(3) An Agreement of Merger or Consolidation duly executed by those authorized to sign on behalf of each constituent bank.

§611.1030 Board of directors of an agricultural credit bank.

Each agricultural credit bank formed by the consolidation of a Farm Credit Bank and a bank for cooperatives shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution. In electing such directors each association shall be entitled to cast a number of votes equal to the number of its voting stockholders.

[53 FR 50393, Dec. 15, 1988, as amended at 61 FR 67185, Dec. 20, 1996]

§611.1040 Creation of new associations.

Any application for the issuance of a charter to a new production credit association or Federal land bank association shall meet the requirements of sections 2.0 or 2.10, respectively, of the Act. Any application for the issuance of a charter for an agricultural credit association shall meet the requirements of section 2.0 of the Act.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

§611.1120 General authority.

(a) An amendment to an association charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the association, the location of its offices, or the territory served.

(b) The Farm Credit Administration may make changes in the charter of an association as may be requested by that association and approved by the

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Farm Credit Administration pursuant to §611.1121 of this part.

(c) The Farm Credit Administration may, by order of the Chairman and on its own initiative, make changes in the charter of a Federal land bank association or a production credit association where the Chairman determines that the change is necessary for the accomplishment of the purposes of the Act.

[50 FR 20400, May 16, 1985, as amended at 51 FR 41945, Nov. 20, 1986]

§611.1121 Charter amendment procedures.

This section shall apply to any request by an association to amend its charter.

(a) An association which proposes to amend its charter shall submit a request to its supervising bank containing the following information:

(1) A statement of the provision(s) of the charter that the association proposes to amend and the proposed amendment(s);

(2) A statement of the reasons for the proposed amendment(s), the impact of the amendment(s) on the association and its stockholders, and the requested effective date of the amendment(s);

(3) A certified copy of the resolution of the board of directors of the association approving the amendment(s);

(4) Any additional information or documents that the association wishes to submit in support of the request or that may be requested by the supervising bank.

(b) Upon receipt of a proposed amendment from an association, the district bank shall review the materials submitted and provide the association with its analysis of the proposal within a reasonable period of time. Concurrently, the bank shall communicate its recommendation on the proposal to the Farm Credit Administration, including the reasons for the recommendation, and any analysis the bank believes appropriate. Following review by the bank, the association shall transmit the proposed amendment with attachments to the Farm Credit Administration.

(c) Upon receipt of an association's request for a charter amendment, the Farm Credit Administration shall review the materials submitted and ei-

ther approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate.

(d) The Farm Credit Administration shall notify the association of its approval or disapproval of the amendment request, and provide a copy of such communication to the bank. A notification of approval shall be accompanied by a copy of the charter, as amended.

[50 FR 20400, May 16, 1985, as amended at 51 FR 32441, Sept. 12, 1986]

§611.1122 Requirements for mergers or consolidations.

This section shall apply to any request for approval of a proposed merger or consolidation of associations. A merger involves the combination of one or more associations into a continuing constituent association, which retains its charter and bylaws (except as amended to effect the merger proposal). A consolidation involves the combination of two or more associations into a newly organized association having a new charter and bylaws.

(a) Where two or more associations plan to merge or consolidate, or where the district board has adopted a reorganization plan for the associations in the district, the associations involved shall jointly submit a request to the district bank containing the following:

(1) In the case of a merger, a copy of the charter of the continuing association reflecting any proposed amendments. In the case of consolidation, a copy of the proposed charter of the new association;

(2) A statement of the reasons for the proposed merger or consolidation, the impact of the proposed transaction on the associations and their stockholders, and the planned effective date of the merger or consolidation;

(3)(i) A certified copy of the resolution of the board of directors of each association recommending approval of the merger or consolidation; or

(ii) In the case of a district reorganization plan, a certified copy of the resolution of the board of directors of each association recommending either approval or disapproval of the proposal.

(4) A copy of the agreement of merger or consolidation;

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(5) Two signed copies of the continuing or proposed Articles of Association;

(6) All of the information specified in paragraph (e) of this section; and

(7) Any additional information or documents each association wishes to submit in support of the request or that the supervising bank or the Farm Credit Administration requests.

(b) Upon receipt of a request for approval of an association merger or consolidation, the district bank shall review the materials submitted to determine whether they comply with the requirements of these regulations and shall communicate with the associations concerning any deficiency. When the bank approves the request to merge or consolidate it shall notify the associations and the Farm Credit Administration of its approval together with the reasons for its approval and any supporting analysis the bank deems appropriate. The associations shall jointly submit the proposal together with required documentation to the Farm Credit Administration for preliminary approval.

(c) Upon receipt of an association merger or consolidation request, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the associations and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be given to the associations and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the merger or consolidation. Approval of a merger or consolidation shall be only pursuant to paragraph (g) of this section.

(d) Upon receipt of preliminary approval by the Farm Credit Administration of a merger or consolidation request, each constituent association shall call a meeting of its voting stockholders. The meeting shall be called on written notice to each stockholder entitled to vote on the transaction, and held in accordance with the terms of each association's bylaws. The affirmative vote of a majority of the voting

stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a merger or consolidation proposal.

(e) Notice of the meeting to consider and act upon a proposed merger or consolidation of associations shall be accompanied by the following information covering each constituent association.

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the agreement of merger or consolidation and the effect of the proposed merger or consolidation on the associations, their stockholders, the new or continuing board of directors, and the territory to be served. In addition, a copy of the agreement must be furnished with the notice to stockholders.

(3) A summary of the provisions of the charter and bylaws of the continuing or new association that differ materially from the existing charter or bylaw provisions of the constituent associations.

(4) A brief statement by the boards of directors of the constituent associations setting forth the basis for the boards' recommendation on the merger or consolidation.

(5) A description of any agreement or arrangement between a constituent association and any of its officers relating to employment or termination of employment and arising from the merger or consolidation.

(6) A presentation of the following financial data:

(i) A balance sheet and income statement for each constituent association for each of the 2 preceding fiscal years.

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(ii) A balance sheet for each constituent association as of a date within 90 days of the date the request for preliminary approval is forwarded to the Farm Credit Administration presented on a comparative basis with the corresponding period of the prior fiscal year.

(iii) An income statement for the interim period between the end of the last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the preceding fiscal year. The balance sheet and income statement format shall be that contained in the association's annual report to stockholders; shall contain any significant changes in accounting policies that differ from those in the latest association annual report to stockholders; and shall contain appropriate footnote disclosures, including data relating to high-risk assets and other property owned, and allowance for loan losses, including net chargeoffs as required in paragraph (e)(10) of this section.

(7) The financial statements (balance sheet and income statement) shall be in sufficient detail to show separately all significant categories of interest-earning assets and interest-bearing liabilities and the income or expense accrued thereon.

(8) Attached to the financial statements for each constituent association, either:

(i) A statement signed by the chief executive officer and each member of the board of directors of the association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with generally accepted accounting principles (except as otherwise disclosed therein) and are, to the best of the knowledge of the board, a fair and accurate presentation of the financial condition of the association; or

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and, as

of the date of the statements, present fairly the financial position of the association in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted thereon.

(9) A presentation for each constituent association regarding its policy on accounting for loan performance, together with the number and dollar amount of loans in all performance categories, including those categorized as high-risk assets.

(10) Information of each constituent association concerning the amount of loans charged off in each of the 2 fiscal years preceding the date of the balance sheet, the current year-to-date net chargeoff amount, and the balance in the allowance for loan losses account and a statement regarding whether, in the opinion of management, the allowance for loan losses is adequate to absorb the risk currently existing in the loan portfolio. This information may be appropriately included in the footnotes to the financial statements.

(11) A management discussion and analysis of the financial condition and results of operation for the past 2 fiscal years for each constituent institution. This requirement can be satisfied by including the materials contained in the management discussion and analysis of each institution's most recent annual report.

(12) A discussion of any material changes in financial condition of each constituent institution from the end of the last fiscal year to the date of the interim balance sheet provided.

(13) A discussion of any material changes in the results of operations of each constituent institution with respect to the most recent fiscal-year-to-date period for which an income statement is provided.

(14) A discussion of any change in the tax status of the new institution from those of the constituent institutions as a result of merger or consolidation. A statement on any adverse tax consequences to the stockholders of the institution as a result of the change in tax status.

(15) A statement on the proposed institution's relationship with an independent public accountant, including

any change that may occur as a result of the merger or consolidation.

(16) A pro forma balance sheet of the continuing or consolidated association presented as if the merger or consolidation had occurred as of the date on the balance sheets required in paragraph (e)(6) of this section, as recommended to the stockholders. A pro forma summary of earnings for the continuing or consolidated association presented as if the merger or consolidation had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheets.

(17) A description of the type and dollar amount of any financial assistance that has been provided during the past year or will be provided by the supervising bank or other party to assist the constituent or the continuing or new association(s), the conditions on which financial assistance has been or will be extended, the terms of repayment or retirement, if any, and the impact of the assistance on the subject association(s) or the stockholders.

(18) A presentation for each constituent association of interest rate comparisons for the last 2 fiscal years preceding the date of the balance sheet, together with a statement of the continuing or new association's proposed interest rate and fee programs, interest collection policies, capitalization rates, dividends or patronage refunds, and other factors that would affect a borrower's cost of doing business with the continuing or new association. Where agreement has not been reached on such matters, current related information shall be presented for each constituent association.

(19) A description for each constituent association of any event subsequent to the date of the financial statements, but prior to the merger or consolidation vote, that would have a material impact on the financial condition of the constituent or continuing or new association(s).

(20) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed decision on the merger or consolidation proposal, or that is necessary to make the required disclosures not misleading.

(21) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(f) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with an association merger or consolidation.

(g) Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the Farm Credit Administration. Each constituent association shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. If no petition is filed with the Farm Credit Administration to reconsider the vote, upon final approval by the FCA, the merger or consolidation shall be effective on the date specified in the merger agreement or at such later date as may be required by the Farm Credit Administration to grant final approval. Notice of final approval shall be transmitted to the associations and a copy provided to the affiliated bank.

(h) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association merger or consolidation constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(i) The notice and accompanying information required under paragraph (e) of this section shall not be sent to stockholders until preliminary approval of the merger or consolidation has been given by the Farm Credit Administration.

(j) Where a proposed merger or consolidation will involve more than three

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associations, the Farm Credit Administration may require the supplementation, or allow the condensation or omission of any information required under paragraph (e) of this section in furtherance of meaningful disclosure to stockholders. Any waiver sought under this paragraph shall be obtained before preparation of the financial statements and accompanying schedules required under paragraph (e) of this section.

(k) The effective date of a merger or consolidation may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after mailing of the notification to stockholders of the results of the stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

[50 FR 20400, May 16, 1985; 50 FR 32165, Aug. 9, 1985, as amended at 51 FR 32441, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988; 56 FR 2674, Jan. 24, 1991; 58 FR 48790, Sept. 20, 1993; 63 FR 64844, Nov. 24, 1998]

§ 611.1123 Merger or consolidation agreements.

(a) Associations operating under the same title of the Act may merge or consolidate voluntarily only pursuant to a written agreement. The agreement shall set forth all of the terms of the transaction, including, but not limited to, the following:

(1) The proposed effective date of the merger or consolidation.

(2) The proposed name and headquarters location of the continuing or consolidated association.

(3) The names of the persons nominated to serve as directors until the first regular annual meeting of the continuing or consolidated association to be held after the effective date of

the merger or consolidation. Any director of a constituent association may be designated in the agreement to serve as a director of the continuing or consolidated association for a period not to exceed his or her current term, after which he or she must stand for reelection. However, the terms of the agreement must provide for the election of at least one director at each annual meeting subsequent to the effective date of the merger or consolidation. The bylaws of the continuing or consolidated association shall reflect the provisions of the merger or consolidation agreement regarding director terms.

(4) A statement of the formula to be used to exchange the stock of the constituent associations for the stock of the continuing or consolidated association. No fractional shares of stock shall be issued.

(5) A statement of any conditions which must be satisfied prior to the effective date of the proposed transaction, including but not limited to approval by stockholders, the supervising bank, and the Farm Credit Administration.

(6) A statement of the representations or warranties, if any, made or to be made by any association, or its officers, directors, or employees that is a party to the proposed transactions.

(7) A statement that the board of directors of each constituent association can terminate the agreement before the effective date upon a determination by an association, with the concurrence of the Farm Credit Administration, that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the merger or consolidation;

(iii) Fraudulent activities were used to obtain stockholders' approval; or

(iv) An event occurred between the time of the vote and the merger that would have a significant adverse impact on the future viability of the continuing institution.

(8) A description of the legal opinions or rulings (including those related to tax matters), if any, that have been obtained or furnished by any party in

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connection with the proposed transaction. Also, refer to paragraph (a)(5) of this section.

(9) The capitalization plan and capital structure for the new institution and a statement that the capitalization plan shall comply with applicable FCA regulations.

(10) Provision for the employee benefits plan, its subsequent continuation or adaptation by the board of directors of the proposed institution following the merger or consolidation.

(11) A statement of the authority of those persons designated to carry out the terms of the agreement, including the authority to waive provisions of the agreement and to execute any documents necessary to perfect title, on behalf of the constituent associations.

(b) As an attachment to the agreement, set forth those provisions of the charter and bylaws of the continuing or consolidated association which differ from the existing charter or bylaw provisions of the constituent associations.

(c) Stockholders have the right to reconsider the approval of the merger provided that a petition signed by 15 percent of the stockholders eligible to vote of one or more of the constituent institutions is filed with the Farm Credit Administration within 35 days after the date of mailing the notification of the final results of the stockholder vote required under §611.1122(g). The Farm Credit Administration will review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition complies with the applicable requirements, a special stockholders meeting shall be called by the institution to reconsider the vote. If a majority of the stockholders voting, in person or by proxy, of any one of the constituent institutions that is a party to the merger vote against the merger, the merger shall not take place.

[50 FR 20400, May 16, 1985, as amended at 51 FR 32442, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988]

§611.1124 Territorial adjustments.

This section shall apply to any request submitted to the Farm Credit Administration to modify association

charters for the purpose of transferring territory from one association to another.

(a) Territorial adjustments, except as specified in paragraph (m) of this section, require approval of a majority of the voting stockholders of each association present and voting or voting by written proxy at a duly authorized meeting at which a quorum is present.

(b) When two or more associations agree to transfer territory, each association shall submit a proposal to the district bank containing the following:

(1) A statement of the reasons for the proposed transfer and the impact the transfer will have on its stockholders and holders of participation certificates;

(2) A certified copy of the resolution of the board of directors of each association approving the proposed territory transfer;

(3) A copy of the agreement to transfer territory that contains the following information:

(i) A description of the territory to be transferred.

(ii) Transferor association's plan to transfer loans and the types of loans to be transferred.

(iii) Transferor association's plan to retire and transferee association's plan to issue equities held by holders of stock, participation certificates, and allocated equities, if any, and a statement by each association that the book value of its equities is at least equal to par.

(iv) An inventory of the assets to be sold by the transferor association and purchased by the transferee association.

(v) An inventory of the liabilities to be assumed from the transferor association by the transferee association.

(vi) A statement that the holders of stock and participation certificates whose loans are subject to transfer have 60 days from the effective date of the territory transfer to inform the transferor association of their decision to remain with the transferor association for normal servicing until the current loan is paid.

(vii) A statement that the transfer is conditioned upon the approval of the stockholders of each constituent association.

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(viii) The effective date of the proposed territory transfer.

(4) A copy of the stockholder disclosure statement provided for in paragraph (f) of this section; and

(5) Any additional relevant information or documents that the association wishes to submit in support of its request or that may be required by the Farm Credit Administration.

(c) Upon receipt of documents supporting a proposed territory transfer, the district bank shall review the materials submitted and provide the associations with its analysis of the proposal within a reasonable period of time. The bank shall concurrently advise the Farm Credit Administration of its recommendation regarding the proposed territory transfer. Following review by the bank, the associations shall transmit the proposal to the Farm Credit Administration together with all required documents.

(d) Upon receipt of an association's request to transfer territory, the Farm Credit Administration shall review the request and either deny or give preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the associations, and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be transmitted to the associations, and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the territory transfer. Final approval shall be granted only in accordance with paragraph (h) of this section.

(e) Upon receipt of preliminary approval by the Farm Credit Administration, each constituent association shall, by written notice, and in accordance with its bylaws, call a meeting of its voting stockholders. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a territory transfer.

(f) Notice of the meeting to consider and act upon a proposed territory transfer shall be accompanied by the

following information covering each constituent association:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A copy of the Agreement to Transfer Territory and a summary of the major provisions of the Agreement.

(3) The reason the territory transfer is proposed.

(4) A map of the association's territory as it would look after the transfer.

(5) A summary of the differences, if any, between the transferor and transferee associations' interest rates, interest rate policies, collection policies, service fees, bylaws, and any other items of interest that would impact a borrower's lending relationship with the institution.

(6) A statement that all loans of the transferor association that finance operations located in the transferred territory shall be transferred to the transferee association except as otherwise provided for in this section or in accordance with agreements between the associations as provided for in §614.4070 of this chapter.

(7) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholders.

(8) A statement that the associations' bylaws, financial statements for the previous 3 years, and any financial information prepared by the associations concerning the proposed transfer of territory are available on request to the stockholders of any association involved in the transaction.

(g) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a

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stockholder of any association in connection with a territory transfer.

(h) Upon approval of a proposed territory transfer by the stockholders of the constituent associations, a certified copy of the stockholders' resolution for each constituent association and one executed Agreement to Transfer Territory shall be forwarded to the Farm Credit Administration. The territory transfer shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the bank.

(i) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a Preliminary or final approval by the Farm Credit Administration of a territory transfer constitutes, directly or indirectly, a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(j) The notice and accompanying information required under paragraph (f) of this section shall not be sent to stockholders until preliminary approval of the territory transfer has been granted by the Farm Credit Administration.

(k) Where a territory transfer is proposed simultaneously with a merger or consolidation, both transactions may be voted on by stockholders at the same meeting. Only stockholders of a transferee or transferor association shall vote on a territory transfer.

(l) Each borrower whose real estate or operations is located in a territory that will be transferred shall be provided with a written Notice of Territory Transfer immediately after the Farm Credit Administration has given final approval of the territory transfer. The Notice shall inform the borrower of the transfer of the borrower's loan to the transferee association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities shall be offered that will not adversely affect

the interest of the owner. The Notice shall give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit shall be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with §614.4070 of this chapter.

(m) This section shall not apply to territory transfers initiated by order of the Chairman of the Farm Credit Administration or to territory transfers due to the liquidation of the transferor association.

(n) Where a proposed action involves the transfer of a portion of an association's territory to an association operating in a different district, such proposal must comply with the provisions of this section and §611.1090 of this part.

[51 FR 32442, Sept. 12, 1986]

§611.1125 Treatment of associations not approving districtwide mergers.

(a) *Issuance of charters.* When issuing charters or certificates of territory for districtwide mergers or consolidations of associations, the Farm Credit Administration will not issue any charters or certificates of territory that include the territory of one or more associations whose stockholders voted to disapprove the merger or consolidation.

(b) A district bank shall not take any of the following actions with respect to an association that has determined to not participate in a districtwide merger or consolidation:

(1) Discriminate in the provision of any financial service and assistance, including, but not limited to, access to loan funds and rates of interest on loans and discounts offered by the district bank to associations and their member/borrowers;

(2) Discriminate in the provision of any related services that are offered by the district bank to associations and their member/borrowers;

(3) Discriminate in the provision of any professional assistance that may

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be normally provided by the district bank to associations; or

(4) Discriminate in the provision of any technical assistance that may be normally provided by the district bank to associations.

(c) This regulation does not prohibit a district bank from taking any action with respect to an association, including, but not limited to, charging different rates of interest or different prices for services, or declining to provide financial assistance; provided that any such action is fully documented and based on an objective analysis of applicable criteria that are uniformly and consistently applied by the district bank to all associations in the district.

[51 FR 32443, Sept. 12, 1986, as amended at 60 FR 34099, June 30, 1995]

Subpart H—Rules for Inter-System Fund Transfers

§611.1130 Inter-System transfer of funds and equities.

(a) Section 5.17(a)(6) of the Act authorizes the FCA to regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System, including banks, associations, and service organizations organized under the Act. This section sets forth the circumstances and procedures under which the FCA may direct such a transfer of funds and equities based on its determination with respect to the financial condition of one or more institutions of the System. For purposes of this section, the term "bond" refers to long-term notes, bonds, debentures, or other similar obligations, or short-term discount notes issued by one or more banks pursuant to section 4.2 of the Act.

(b) The FCA may direct a transfer of funds or equities by one or more banks of the System to another bank of the System where it determines that:

(1) The receiving institution will not be able to make payments of principal or interest on bonds for which it is primarily liable within the meaning of section 4.4(a) of the Act; or

(2) The common or preferred stock, participation certificates, or allocated equities of the receiving institution have a book value less than their par or stated values; or

(3) The total bonds outstanding for which the receiving institution is primarily liable exceed 20 times the combined capital and surplus accounts of the bank; or

(4) Based on application to it of one or more of the following ratios, the receiving institution is not financially viable in that it will not be able to continue to extend new or additional credit or financial assistance to its eligible borrowers:

(i) The ratio of stock to earned net worth (including legal reserve, unallocated and reserved surplus, undistributed earnings, and allowance for losses) exceeds 2 to 1;

(ii) The ratio of the outstanding bonds to capital and surplus exceeds 15 to 1;

(iii) Nonearning assets (any non-interest-bearing assets, including but not limited to cash, noninterest-earning loans, net fixed assets, other property owned, accrued interest receivable, and accounts receivable) exceed 15 percent of total assets;

(iv) Lendable net worth (interest-earning assets less interest-bearing liabilities) is zero or less.

(c) The FCA may direct a transfer of funds or equities between two or more Federal land bank associations or two or more production credit associations in district where it determines that such transfer:

(1) Is necessary to provide financial support to the district bank in which those associations are stockholders based on application of the criteria to the bank as set forth in paragraph (b) of this section; or

(2) Is necessary to provide financial support to one or more other like associations in the district based on application of the criteria set forth in paragraph (b)(2) or (b)(4) of this section to the associations, provided that in applying paragraph (b)(4)(ii) of this section the ratio of outstanding indebtedness to capital and surplus of the receiving association(s) shall not exceed 9 to 1; or

(3) Is an integral part of a plan that has been adopted by other institutions of the System, and approved by the FCA, under which those institutions will extend financial assistance to the

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district bank in which those associations are stockholders.

(d) A direction by the FCA for a transfer of funds or equities pursuant to this section shall be signed by the Chairman and shall establish the amount, timing, duration, repayment, and other terms of assessments necessary to accomplish such transfer, taking into consideration the financial condition of each institution to be assessed. Where the FCA directs a transfer of funds or equities between associations under paragraph (c) (1) or (2) of this section, it may authorize the district bank in which such associations are stockholders to accomplish the necessary assessments through debits and credits to the accounts of the bank.

[50 FR 36986, Sept. 11, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986, as amended at 51 FR 41945, Nov. 20, 1986; 58 FR 48790, Sept. 20, 1993; 59 FR 21643, Apr. 26, 1994]

Subpart I—Service Organizations

§611.1135 Incorporation of service organizations.

(a) *General.* Any Farm Credit bank(s) or association(s) may organize a corporation to perform, for or on behalf of the bank(s) or association(s), any function or service that the bank(s) or association(s) is authorized to perform under the Act and the regulations, except extending credit and providing the sale of insurance services. The bank(s) or association(s) wishing to organize such a corporation shall submit an application to the Farm Credit Administration according to the application requirements of paragraph (b) of this section. If the proposal meets the requirements of the Act, the regulations, and any other conditions that the Farm Credit Administration may impose, the Agency may issue a charter for the service corporation making it a federally chartered instrumentality of the United States. Such service corporation shall be subject to examination, supervision, and regulation by the Farm Credit Administration. Only Farm Credit banks or associations are eligible to become stockholders in such a corporation. Each bank or association shall be eligible to become a

stockholder of each service corporation organized under this section.

(b) *Application.* The application for a corporate charter shall include:

(1) The certified resolution of the board of each organizing bank or association authorizing the incorporation.

(2) A request signed by the president(s) of the organizing bank(s) or association(s) to the Farm Credit Administration to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity.

(3) The proposed articles of incorporation addressing, at a minimum, the following:

(i) The name of the corporation;

(ii) The city and State in which the principal offices of the corporation are to be located;

(iii) The general purposes for which the corporation is formed;

(iv) The general powers of the corporation;

(v) The procedures under which a bank or association may become a stockholder;

(vi) The procedures by which bylaws may be adopted and amended;

(vii) The title, par value, voting and other rights, and authorized amount of each class of stock to be issued by the corporation, and the procedures by which each class may be retired;

(viii) The notice and quorum requirement for a meeting of shareholders, and the vote required for shareholder action on various matters;

(ix) The procedures and shareholder voting requirements for the merger, voluntary liquidation, or dissolution of the corporation or the distribution of corporate assets;

(x) The standards and procedures for the application and distribution of corporate earnings;

(xi) The duration of the corporation.

(4) The proposed bylaws, which shall include the provisions required by §615.5220(b) of this chapter.

(5) A statement as to the proposed amounts and sources of capitalization and operating funds.

(6) Any agreements between the organizing banks or associations relating to the organization or the operation of the corporation.

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(7) Any other supporting documentation as may be requested by the Farm Credit Administration.

(c) *Approval.* The Farm Credit Administration may condition the issuance of a charter, including imposing minimum capital requirements, as it deems appropriate. For good cause, the Farm Credit Administration may deny the application. Upon approval by the Farm Credit Administration of a completed application, which shall be kept on file at the Farm Credit Administration, the Agency shall issue a charter for the service corporation which shall thereupon become a corporate body and a Federal instrumentality.

(d) *Amendment of articles of incorporation.* The articles of incorporation of a service corporation may be amended in either of two ways:

(1) The board of directors of the corporation may request that the Farm Credit Administration amend the articles of incorporation by sending with its request a certified resolution of the board of directors of the service corporation and stating:

- (i) The section(s) to be amended;
- (ii) The reason(s) for the amendment;
- (iii) The language of the articles of incorporation provision, as amended; and
- (iv) That the requisite shareholder approval has been obtained. The request shall be subject to the approval of the Farm Credit Administration as stated in paragraphs (a) and (c) of this section.

(2) The Farm Credit Administration may at any time make any and all changes in the articles of incorporation of a service corporation that are necessary and appropriate for the accomplishment of the purposes of the Act.

[47 FR 27061, June 23, 1982, as amended at 50 FR 46418, Nov. 8, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986, as amended at 51 FR 41945, Nov. 20, 1986; 56 FR 2674, Jan. 24, 1991; 61 FR 67185, Dec. 20, 1996; 62 FR 13213, Mar. 19, 1997; 63 FR 39225, July 22, 1998]

§ 611.1136 Incorporated and unincorporated service organization—regulation and examination.

Incorporated and unincorporated service organizations shall be subject to regulations for the banks and asso-

ciations of the Farm Credit System, and shall be subject to examination by the Farm Credit Administration.

[53 FR 27155, July 19, 1988]

§ 611.1137 Title VIII service corporations.

(a) Service corporations may be organized by any Farm Credit institution(s) other than the Federal Agricultural Mortgage Corporation or its affiliates for the purpose of exercising the authorities granted under title VIII of the Act to act as agricultural mortgage marketing facilities. The requirements of §§ 611.1135 and 611.1136 apply as if such organizing institutions were banks, except for good cause as determined by the Farm Credit Administration. Such service corporations may issue stock to Farm Credit institutions other than the Federal Agricultural Mortgage Corporation or its affiliates and to persons that are not Farm Credit System institutions, provided at least 80 percent of the voting stock is at all times held by Farm Credit institutions other than the Federal Agricultural Mortgage Corporation or its affiliates.

(b) For the purposes of this regulation, *person* means an individual or a legal entity organized under the laws of the United States or any State or territory thereof.

[57 FR 26992, June 17, 1992]

Subpart J—O [Reserved]

Subpart P—Termination of Farm Credit Status—Associations

SOURCE: 56 FR 3407, Jan. 30, 1991, unless otherwise noted.

§ 611.1200 General—Applicability.

(a) Each association is authorized, in accordance with sections 7.10 and 7.11 of the Act, to terminate the status of the association as a Farm Credit institution. The regulations in this subpart set forth the procedural, disclosure, voting and approval requirements applicable to such termination. The Farm Credit Administration may in its sole discretion grant a waiver in writing from any requirement of this subpart for good cause shown.

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(b) Except as provided in paragraph (c) of this section, these regulations are applicable to an association that seeks to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution. In the event that a receiver or conservator is appointed by the Farm Credit Administration in the case of a voluntary or involuntary liquidation of the association, the provisions of subpart L of part 611 apply, and the provisions of this subpart shall not apply.

(c) These regulations are not applicable to the termination of an association whose investment in the Farm Credit Bank or agricultural credit bank of which it is a member is in excess of 25 percent of the bank's capital as computed according to GAAP, or whose indebtedness to the Farm Credit Bank or agricultural credit bank of which it is a member is in excess of 25 percent of the total loans of the bank as of the quarter end preceding the adoption of the commencement resolution.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

§ 611.1205 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Commencement resolution* means the resolution adopted pursuant to § 611.1210(a) to indicate the commencement of the termination process.

(b) *GAAP* means generally accepted accounting principles, which is that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. GAAP shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated. When the Farm Credit Administration's interpretation of how GAAP should be applied to a specific event or transaction differs from an association's interpretation, the interpretation of the

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(c) *OFI* means an other financing institution that has established a funding and discount relationship with a Farm Credit Bank or an agricultural credit bank pursuant to section 1.7(b)(1) of the Act and the regulations in subpart P of part 614.

(d) *Reconsideration vote* means the vote at which the voting stockholders reconsider whether to terminate the terminating association's Farm Credit status.

(e) *Successor institution* means the institution to which the terminating association will convert when its Farm Credit charter is revoked.

(f) *Terminating association* means an association seeking to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution.

(g) *Termination resolution* means the resolution adopted pursuant to § 611.1211(a) approving the applications for termination and a new charter and providing for submission of the termination proposal to a stockholder vote.

(h) *Termination vote* means the stockholder vote at which the termination proposal is first submitted to the voting stockholders for their approval or disapproval.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991; 63 FR 36547, July 7, 1998]

§ 611.1210 Advance notification.

(a) An association's board of directors shall commence the process of termination by adopting a commencement resolution indicating the association's intention to terminate its Farm Credit status.

(b) Within 5 days of the adoption of the commencement resolution by the board of directors, the terminating association shall:

(1) Submit a certified copy of the commencement resolution to the Farm Credit Administration; and

(2) Mail a brief announcement to all holders of equity in the association which states that the board is taking steps to terminate its Farm Credit status and which describes the process of termination, the anticipated effect of

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termination on current holders of equity, and the type of institution the successor institution will be. If bylaws are adopted in accordance with paragraph (e) of this section, the announcement shall also state that, during the time period from the passage of the commencement resolution until the effective date of termination, new common stock and participation certificates either purchased from the association in connection with a loan or sold to the association prior to the termination will not entitle the holder to receive a share in the adjusted book value in excess of par of the association.

(c)(1) Within 15 days after submission of the commencement resolution pursuant to paragraph (b)(1) of this section, the terminating association shall submit to the Farm Credit Administration a statement of its estimation of the exit fee together with an explanation of the computation of the exit fee pursuant to the requirements of §611.1240. For purposes of this estimate of the exit fee, the computation date set forth in §611.1240(c) shall be the quarter end preceding the date of the commencement resolution.

(2) Within 45 days of its receipt of the terminating association's estimated exit fee, the Farm Credit Administration shall either confirm the association's estimation of the exit fee or notify the association of any required revisions to the computation.

(3) In the event that the Farm Credit Administration requires adjustments to the estimated exit fee pursuant to paragraph (c)(2) of this section, the terminating association may request reconsideration of any revisions. Such request shall be in writing and shall set forth specific reasons why the revisions should not be made. The Farm Credit Administration shall reconsider the revisions and shall inform the terminating association of its determination within 15 days of the receipt of the reconsideration request.

(d) During the time period after the board of directors' adoption of the commencement resolution pursuant to paragraph (a) of this section and prior to the effective date of termination, the following conditions shall apply to

the terminating association's conduct of business:

(1) Each prospective new borrower shall be informed of the effect of the proposed termination upon the borrower's loan and shall be specifically informed whether the borrower will continue to have any of the borrower rights provided under the Act and regulations promulgated thereunder;

(2) Any common stockholders or participation certificate holders who seek to have such equity interest retired before termination shall be informed that the retirement would extinguish the holder's right to an interest in the successor institution if the termination is completed or to dissent from the termination and receive an amount equal to the adjusted book value of the holder's equity in the terminating association.

(e) Notwithstanding any provisions of §615.5230(b) to the contrary, an association may adopt bylaws which provide for the issuance of a special class of common stock and participation certificates in connection with loans granted during the time period subsequent to the adoption of the commencement resolution and prior to the termination. Such common stock or participation certificates, which shall be issued in accordance with section 4.3A of the Act, shall have characteristics identical to shares of the existing classes of common stock or participation certificates issued as a condition of the extension of a loan, except for the following:

(1) In the event of termination, the holder shall be entitled to receive the following:

(i) If the holder is eligible to vote and does not vote against the termination, an interest in the successor institution in an amount equal to the adjusted book value or the purchase price of the stock, whichever is less;

(ii) If the holder is not eligible to vote or is eligible to vote and votes against the termination, either an interest in the successor institution as set forth in paragraph (e)(1)(i) of this section, or, if such holder dissents pursuant to §611.1260, cash in the amount of the purchase price or the adjusted book value of the stock or participation certificate, whichever is less.

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(2) In the event that the termination does not occur, the special classes of stock or participation certificates shall automatically convert into shares of the otherwise identical classes of stock or participation certificates issued prior to the adoption of the commencement resolution.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§611.1211 Filing of termination application.

(a) The board of directors of an association that seeks to terminate its status shall adopt an appropriate termination resolution approving an application for such termination, approving an application for a new charter for the successor institution, and providing for the submission of such termination proposal to its stockholders for a vote.

(b) An original and three copies of a termination application consisting of the following materials shall be submitted by the terminating association to the Farm Credit Administration for review and preliminary approval:

(1) A certified copy of the termination resolution adopted pursuant to paragraph (a) of this section;

(2) A copy of the plan of termination as required under §611.1230;

(3) An information statement that complies with the requirements of §611.1225;

(4) All other information that is to be submitted to the stockholders and other equity holders in connection with the contemplated action; and

(5) Any additional information the board of directors wishes to submit to the Farm Credit Administration in support of the request or that the Farm Credit Administration requests.

(c) The terminating association shall provide the Farm Credit Administration with any material revisions to information in the plan of termination, including updated financial information, that becomes available during the pendency of the termination application and prior to termination.

§611.1212 Filing date of termination application.

(a) Except as provided in paragraph (c) of this section, the termination application will be given a filing date

which shall be the date on which it is determined to be technically complete. Within 10 business days after the Farm Credit Administration receives the termination application, the Farm Credit Administration shall determine that the application is technically complete and give it a filing date, or return the application to the terminating association if it is incomplete. If the Farm Credit Administration fails to make a determination or to return the application before the end of the 10-day review period, the application shall be deemed to be technically complete and shall receive a filing date which is the last day of the 10-day review period.

(b) A termination application is considered to be technically complete when it is determined upon preliminary review to contain responses to all items required to be submitted to the Farm Credit Administration under §611.1211.

(c) In the event the advance notification required in §611.1210 is not received by the Farm Credit Administration at least 60 days prior to the filing date which would otherwise be assigned to the termination application in accordance with paragraph (a) of this section, the filing date shall be the date that is 60 days following the date on which the terminating association first informs the Farm Credit Administration of the association's intention to terminate its Farm Credit status. During this 60-day period, the Farm Credit Administration shall contact other associations to determine their willingness to provide service to the territory of the terminating association or to determine if there are persons who wish to charter a new association to serve the territory. An inability of the Farm Credit Administration to arrange for a new service provider for the territory shall not be grounds for an extension of the 60-day period. However, the Farm Credit Administration may in its sole discretion reduce the required 60-day period in the event that a new service provider to serve the territory is determined. This paragraph shall not apply if the entire chartered territory of the terminating association is already included in the charter of one or more associations that are chartered to offer

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credit services of the same type as the terminating association.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§ 611.1215 Farm Credit Administration review and approval.

(a) When the termination application has received a filing date, the Farm Credit Administration shall review the application and either disapprove or give its preliminary approval pursuant to section 7.11(a)(2) of the Act.

(b) The Farm Credit Administration Board shall have 30 days from the filing date, as defined in § 611.1212, to approve or disapprove the termination application. If the Farm Credit Administration Board does not act within such 30-day period, the plan of termination may be submitted to the stockholders pursuant to section 7.11(a)(2) of the Act.

(c) If the application is disapproved, written notice specifying the reasons for disapproval shall be transmitted to the chief executive officer of the association, who shall promptly notify the association's board of directors. If the application is disapproved, it shall not be submitted to the stockholders for a vote.

(d) Upon stockholder approval of the proposed termination as provided in § 611.1220, the secretary of the terminating association shall forward to the Farm Credit Administration a certified record of the results of the stockholder vote and shall notify its stockholders and other equity holders of the results of the vote as provided in § 611.1220(e).

(e) Final approval by the Farm Credit Administration Board pursuant to section 7.10(a)(2) shall be conditioned upon the following:

(1) A termination vote in favor of termination and, if a reconsideration vote is held, a reconsideration vote in favor of termination;

(2) Receipt by the Farm Credit Administration of conformed executed copies of all contracts and agreements submitted pursuant to § 611.1230;

(3) Satisfactory evidence of the terminating association's adequate provision for payment of debts and retirement of equities;

(4) Evidence of the grant of a new charter for the successor institution by

the appropriate Federal or State chartering authority;

(5) Payment of the exit fee by certified check or other means agreed upon by the Farm Credit Administration and the terminating association; and

(6) The fulfillment of any other condition of termination imposed by the Farm Credit Administration Board which is necessary and appropriate to provide for the equitable treatment of the parties affected by the termination.

(f) If the Farm Credit Administration grants final approval, the terminating association's charter shall be revoked, and the termination shall be effective on the last to occur of—

(1) The proposed termination date of the terminating association;

(2) Ninety (90) days after receipt by the Farm Credit Administration of the notice required to be submitted pursuant to paragraph (d) of this section; and

(3) Receipt of final payment of the exit fee.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§ 611.1220 Voting record date and stockholder approval.

(a) Upon receipt of preliminary approval of the termination application by the Farm Credit Administration Board, or if the Board takes no action prior to the end of the 30-day review period, the association shall call a meeting of its voting stockholders. The stockholders meeting shall be held within 60 days of the last day of the 30-day review period. All holders of equity in the terminating association shall be permitted to attend the meeting. The stockholders eligible to vote shall be the stockholders who are eligible to vote on the voting record date as determined by the association's bylaws if such date is not more than 70 days prior to the stockholder vote, or on a date fixed by the board of directors which shall be not more than 70 days prior to the date of the stockholder vote. The association shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the association's bylaws.

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(b) The notice of meeting to consider and act upon the board of directors' resolutions shall be accompanied by an information statement that complies with the requirements of §611.1225.

(c)(1) The terminating association shall establish voting security procedures that comply with the procedures for the election of directors in §611.330, as applicable. Specifically, the terminating association shall ensure that all information regarding how or whether individual stockholders have voted and all materials such as ballots, proxy ballots, election records, and other relevant documentation related to the votes of stockholders is held in strict confidence.

(2) The terminating association may adopt procedures that require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. The terminating association may also use signed proxies or eligibility certificates that will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope.

(3) The terminating association shall use a form of identity code on the ballot enabling it to determine which stockholders are eligible to exercise dissenters' rights and shall require that the votes be tabulated by an independent party who is not a stockholder, director, or officer of the terminating association or the successor institution. When the terminating association receives notification pursuant to §611.1260 that a stockholder intends to exercise dissenters' rights, the association will verify with the independent party that the stockholder voted against the termination. The terminating association shall be informed of the vote of a stockholder only in the event that stockholder exercises the right to retire stock in the association in accordance with §611.1260.

(d) The proposal shall be approved by the stockholders if agreed to by a majority of the eligible voting stockholders of the association voting in person or by proxy at the stockholders' meeting.

(e) Upon approval of a proposed termination by the stockholders of the terminating association, a certified

statement showing the results of the stockholder vote shall be forwarded to the Farm Credit Administration within 10 days following the stockholders' meeting. The terminating association shall notify its stockholders and other holders of equity interests of the results of the vote not later than 30 days after the final vote. If the stockholder vote is in favor of termination, stockholders who voted against the termination and other equity holders shall be informed of their right to dissent as provided in §611.1260(f). In addition, the terminating association shall further notify stockholders of their right to file a petition for reconsideration in accordance with §611.1235 and that any petition for reconsideration must be filed on or before a date certain, which shall be 35 days after the date the terminating association mails notice to the stockholders of the results of the stockholder vote.

§611.1225 Requirements for information statement.

Notice of the meeting to consider and act upon a proposed termination shall be sent to all stockholders and other holders of equity interests and shall be accompanied by an information statement that contains the information and materials set forth in this regulation as follows:

(a) A statement on either the first page of the material or the notice of the stockholders' meeting, in capital letters and boldface type that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(b) A statement on the first page of the material entitled "Executive Summary" and consisting of a concise description of the material changes in rights of the borrowers, stockholders, and holders of other equity interests to occur as a result of the termination,

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the effect of such changes, and the potential benefits and disadvantages to them of the termination.

(c) A description of the plan of termination as required in §611.1230.

(d) A statement by the board of directors of the terminating association enumerating the potential benefits and disadvantages of the termination together with the basis for the board's recommendation for termination.

(e) A list of the initial board of directors and senior officers of the successor institution, together with a brief description of the business experience of each such person, including principal occupation and employment, during the past 5 years.

(f) A summary of the provisions of the organizational documents of the successor institution, including the articles of incorporation and bylaws, that differ materially from the charter and bylaws of the terminating association. The summary shall indicate both whether the maintenance of a borrowing relationship with the successor institution will be required as a condition for maintaining a stockholder's interest, and whether the maintenance of a stockholder's interest will be required as a condition for maintaining a borrowing relationship.

(g) An explanation of any changes in the nature of the stockholders' and other equity holders' investment in the association, including but not limited to any changes in dividends, patronage refunds, voting rights, preferences, retirement of equities, and priority upon liquidation. If any eligible borrower stock is outstanding, such explanation shall include a statement that the guaranty afforded to eligible borrower stock by section 4.9A of the Act shall be extinguished at termination and that any stock of the successor institution received in exchange for eligible borrower stock shall not be protected under section 4.9A of the Act.

(h) An explanation of the effect of termination on the rights that borrowers are afforded under the Act; the expiration date of those rights, if applicable, under the provisions of the plan of termination; a statement that borrowers may seek to have their loans sold to or refinanced with another lending institution, including the asso-

ciation(s) that will be chartered to serve the terminating association's territory or any other associations that already serve the territory, provided that any such Farm Credit institution is authorized to make such a loan in accordance with part 614 of this chapter; and an explanation of the procedure for a borrower to apply for the sale or refinancing of his loan to the association(s) that will be chartered to serve the terminating association's territory, if such designations have been made. The disclosure shall include the name, address and telephone number of such association(s), together with a statement that any such association is not obligated to accept any loans of the terminating association.

(i) An explanation of the formula and process by which equity of the terminating association will be exchanged for equity in the successor institution or other consideration.

(j) A description of any agreement or arrangement with any person, including any officers or directors of the terminating association, relating to employment or termination of employment with the terminating association or employment with the successor institution.

(k) An explanation of the computation of the exit fee and the estimated amount of the exit fee.

(l) A statement detailing the nature and type of financial institution that the successor institution will become after termination and the conditions of approval, if any, placed on the successor institution by the State or Federal financial regulator that will charter the successor institution.

(m) A summary of the differences, if any, between the terminating association and the successor institution with respect to interest rates, interest rate policies, collection policies, services provided, service fees, and any other item of interest that would affect a borrower's lending relationship with the successor institution including whether stockholders will be restricted in any way in their ability to borrow from the successor institution.

(n) A discussion of the expected capital requirements of the successor institution, and the amount and method

of capitalization for the successor institution.

(o) An explanation of the sources and manner of funding the operations of the successor institution.

(p) An explanation of the existence of any continuing contingent liability that will not be paid immediately upon termination and the manner in which this liability will be addressed by the successor institution.

(q) A summary of the differences in tax status of the terminating association and the successor institution, and an explanation of the effect of such changes on both the successor institution and the stockholders.

(r) A brief description of the regulatory environment for the successor institution and a summary of the differences from the current regulatory environment that affect the cost of doing business of the value of equity and that are not addressed elsewhere in the information statement.

(s) A statement describing those stockholders and other holders of equity that are entitled to dissenters' rights and an explanation of those rights as set forth in §611.1260, including the estimated value of the stock upon distribution, procedures for the exercise of dissenters' rights, and the time period during which such rights may be exercised, and a statement that eligible voting stockholders who do not vote against the termination will not receive dissenters' rights.

(t)(1) A presentation of the following financial data:

(i) A balance sheet and income statement for the terminating institution for each of the 2 preceding fiscal years;

(ii) A balance sheet for the terminating institution as of a date within 90 days of the date the termination application is forwarded to the Farm Credit Administration, presented on a comparative basis with the corresponding period of the prior fiscal year;

(iii) An income statement for the interim period between the end of the last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the prior fiscal year;

(iv) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the date of the most current balance sheet presented in the statement; and

(v) A pro forma summary of earnings for the successor institution presented as if the termination has 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 pursuant to paragraph (t)(1)(iv) of this section.

(2) The format for the balance sheet and income statement shall be the same as is contained in the institution's annual report to stockholders and shall contain appropriate footnote disclosures, including data relating to high-risk assets and other property owned, and allowance for losses.

(3) The financial statements shall include either of the following:

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

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, 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 terminating association in accordance with GAAP applied on a consistent basis, except as otherwise disclosed therein.

(u) A description of any event subsequent to the date of the financial statements, but prior to the date upon which the termination application is submitted to the Farm Credit Administration, that would have a material impact on the financial condition of the terminating association or the successor institution.

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(v) A description of any event subsequent to the submission of the termination application to the Farm Credit Administration that would have a material impact on any information in the termination application.

(w) A statement of any other material fact or circumstance that a stockholder would need to know in order to make an informed decision on the proposed plan of termination, or that is necessary to make the required disclosures not misleading.

(x) A proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(y) A certification signed by the entire board of directors of the terminating association as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director shall inform the Farm Credit Administration of the reasons for such refusal.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991; 58 FR 48790, Sept. 20, 1993]

§ 611.1226 Prohibited acts.

(a) No terminating association or director, officer, employee or agent thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact concerning the proposed plan of termination to a stockholder of the association.

(b) No director, officer, employee, or agent of a terminating association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association's plan of termination constitutes, directly or indirectly, either a recommendation on the merits of the proposal or an assurance concerning the adequacy or accuracy of any information provided to the association's stockholders and other equity holders in connection therewith.

§ 611.1230 Plan of termination.

The plan of termination shall include the following information:

(a) Copies of all contracts, agreements and other documents pertaining

to the proposed termination and organization of the successor institution.

(b) A statement of the means by which the assets of the terminating association will be transferred to, and its liabilities assumed by, the successor institution.

(c) The terminating association's plan to retire, and the successor institution's plan to issue, equities held by holders of stock, participation certificates, and allocated equities, if any.

(d) A copy of the charter application filed with the appropriate Federal or State chartering authority, together with any exhibits or other supporting information that is submitted to such authority.

(e) A statement whether the successor institution will continue to have a credit relationship with the Farm Credit bank and the effect such status will have on the provision for payment of the terminating association's debts. The plan of termination shall include evidence of the agreement and plan for satisfaction of outstanding debts, whether contained in a general financing agreement or otherwise.

(f) The proposed effective date of the termination.

§ 611.1235 Stockholder reconsideration.

(a) Eligible voting stockholders have the right to reconsider the approval of the termination provided that—

(1) A petition signed by 15 percent of the eligible voting stockholders of the association is filed with the association, and a copy of such petition is filed with the Farm Credit Administration, within 35 days after the date of mailing of the notification to stockholders of the final results of the stockholder vote required under § 611.1215; and

(2) Such petition is certified by the terminating association as provided in paragraph (b) of this section.

(b) Each petition shall include the signature, printed name and full address of each voting stockholder signing the petition. Within 5 days of its receipt of a timely filed stockholder petition, the association shall certify whether the signatures on the petition are the signatures of persons who were

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eligible voting stockholders of the terminating association on the voting record date, and the association shall notify the Farm Credit Administration of such certification.

(c) The petition shall include the name and address of a person who shall serve as petitioners' representative and who shall represent the interests of the petitioners in the reconsideration vote process.

(d) If the terminating association certifies that at least 15 percent of eligible voting stockholders have signed the petition, a special stockholders' meeting shall be called by the association to vote on the reconsideration. Such meeting shall be held within 60 days after the date on which the stockholders were notified of the final result of the termination vote. If a majority of stockholders of the association voting in person or by written proxy vote against the termination, the termination is not approved. If a majority of stockholders of the association voting in person or by written proxy do not vote against the termination, the termination shall be effective pursuant to the provisions of §611.1215(f), but not less than 15 days after the reconsideration vote.

(e) The petitioners, through the petitioners' representative, and board of directors of the terminating association shall each have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be reasonable in length and shall be mailed to stockholders and other equity holders along with the notice of stockholders' meeting for the reconsideration vote.

(f) The terminating association shall, at its expense, immediately provide the stockholders initiating the petition with a list of the names and addresses of all of the eligible voting stockholders of the association. All other expenses for the petition shall be borne by the petitioners. Reasonable expenses for the reconsideration vote shall be borne by the terminating association.

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§611.1240 Exit fee.

(a) For the purposes of this section, the following definitions apply:

(1) *Assets* means all assets less appropriate valuation reserves as determined in accordance with GAAP except where otherwise noted in this section.

(2) *Contingent liabilities* means those liabilities that, in accordance with GAAP, will materialize if certain events occur.

(3) *Total capital* means all capital stock, surplus and undivided profits accounts as determined in accordance with GAAP, except where otherwise noted in this section, and as adjusted pursuant to the requirements of §611.1240.

(b) A terminating association shall pay an exit fee equal to the amount by which the total capital of the association exceeds 6 percent of its assets. The exit fee shall be paid to the Farm Credit Assistance Fund if the effective date of termination is prior to January 1, 1992 or to the Farm Credit Insurance Fund if the effective date is after that date.

(c) The computation date for the exit fee shall be the quarter end preceding the filing date. A certified audit of the terminating association shall be performed by a qualified public accountant, as defined in §621.2(i), as of the computation date. The Farm Credit Administration may, in its complete discretion, waive this requirement if such an audit was performed as of a date within the 6 months preceding the computation date.

(d) The method of computation shall be as follows:

(1) The average daily balance of assets and total capital for the past 12 months preceding the computation date will be computed as a basis for determining the exit fee; and

(2) Account balances shall be computed in accordance with GAAP and adjusted in accordance with paragraphs (e), (f), (g), and (h) of this section.

(e) For purposes of determining the amount of the exit fee, the Farm Credit Administration will review the terminating association's transactions over a 3-year period prior to the date of the adoption of the termination resolution.

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If this review determines that the terminating association's account balances do not accurately reflect the value of its assets and liabilities, or that the association has retired capital outside the ordinary course of business, or that the association has taken any other actions unrelated to its core business that have the effect of increasing or decreasing the amount of the exit fee, the Farm Credit Administration may make adjustments to the association's assets, liabilities, or capital and recompute the exit fee based on these adjustments. The review by the Farm Credit Administration shall include, but not be limited to:

(1) Additions to or subtractions from the allowance for loan losses;

(2) Additions to assets from transactions that are outside the terminating association's ordinary course of business;

(3) Dividends or patronage refunds exceeding the terminating association's usual practices;

(4) Changes in the terminating association's capitalization plan or implementation of that plan that increased or decreased the level of borrower investment;

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

(6) Assets that may be overvalued, undervalued or not recorded on the books of the association.

(f) Capital of the terminating association owned by another Farm Credit institution or by the Financial Assistance Corporation shall not be included in capital for the purpose of determining the exit fee.

(g) In the event that GAAP requires that a liability be recorded on the balance sheet that will be offset by an unrecorded asset, the transaction recording the liability shall be reversed.

(h) In the event the terminating association has recorded expenses that would not have been recorded but for the termination, such transactions shall be reversed.

(i) The exit fee shall be paid by certified check, or other means agreed upon by the Farm Credit Administration and the terminating association.

[56 FR 3407, Jan. 30, 1991, as amended at 58 FR 48790, Sept. 20, 1993]

§ 611.1250 Repayment of debts.

(a) The terminating association shall provide for the payment or assumption by the successor institution of all outstanding debt obligations.

(b) The terminating association may establish and maintain an OFI relationship with the Farm Credit Bank or agricultural credit bank, subject to all applicable requirements of part 614, subpart P, of this chapter. The general financing agreement establishing the OFI relationship shall provide for the assumption by the successor institution of any direct loan or other obligation that a production credit association is authorized to incur and that is not repaid at the time of termination. Any part of the direct loan or other obligation that is not linked to a loan covered by the general financing agreement shall be repaid as provided in paragraph (c) of this section.

(c) A terminating association that will not become an OFI shall either repay its direct loan and any other obligations to the Farm Credit Bank or agricultural credit bank upon termination or shall arrange with the appropriate bank to repay the loan or obligation. The terminating association may, with the concurrence of the Farm Credit Bank or agricultural credit bank, repay the loan or obligation over a period that shall not exceed 3 years following termination.

(d) The terminating association shall pay or make provision for payment of obligations to any other Farm Credit institutions under any loss-sharing agreement or other agreement.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

§ 611.1255 Retirement of equities owned.

(a) The Farm Credit Bank or agricultural credit bank may retire all equities of the bank that are owned by the terminating association on the termination date or may enter into an agreement with the terminating association that would provide for a phased retirement of the equities. Any such plan for phased retirement shall provide for such retirement to be completed by the earlier to occur of the date on which the terminating association repays all

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indebtedness to the bank or the date that is 3 years from the termination date, provided that no retirement shall occur during that period if any such retirement would result in the Bank's failure to meet minimum capital requirements.

(b) If the Farm Credit Bank or agricultural credit bank, and the terminating association are unable to reach agreement regarding the retirement of the bank's equities, either institution may send the most recent proposals to the Farm Credit Administration along with an explanation of the points of disagreement. The Farm Credit Administration may require the bank to retire terminating association equities under such conditions as the Farm Credit Administration may require.

(c) No retirement shall occur if the Farm Credit Administration determines that the retirement of equities of the Farm Credit Bank or the agricultural credit bank would threaten the viability of the bank.

(d) The amount to be paid to a terminating association in the retirement of equities owned in the Farm Credit Bank or the agricultural credit bank shall be equal to the amount of the allocated equities owned by the terminating association in the bank, less any impairment, at the date the request for retirement is made by the terminating association.

(e) If the terminating association has outstanding stock issued to another Farm Credit institution, the association shall retire all such investment prior to termination.

(f) A Farm Credit Bank's or agricultural credit bank's equities obligated to be retired under any agreement between the terminating association and the bank shall not be considered as part of the permanent capital of the Farm Credit Bank or agricultural credit bank for purposes of §615.5240.

[61 FR 67186, Dec. 20, 1996]

§611.1260 Dissenters' rights.

(a) Dissenting stockholders, at their discretion, may, but are not required to, have their stock or participation certificates in the terminating association retired as provided in paragraph (b) of this section. To be eligible to be a dissenting stockholder a person must

be the owner, other than a Farm Credit institution, of voting or non-voting stock or other equities of the terminating association who was either—

(1) Not eligible to vote on the termination resolution; or

(2) Eligible to vote on the termination resolution and voted, in person or by proxy, against such resolution.

(b) The terminating association shall pay dissenting stockholders in accordance with the priorities in liquidation set forth in the bylaws of the terminating association. Notwithstanding any provision of paragraph (c) to the contrary, dissenting stockholders who hold eligible borrower stock shall receive not less than par value for their stock.

(c)(1) Except as provided in paragraph (d) of this section, the price paid to dissenting stockholders who own common stock or participation certificates shall be the adjusted book value, which is the book value on the computation date adjusted to reflect—

(i) Any increase or decrease in asset value resulting from the appraisals required in §611.1240; and

(ii) Deduction of the amount of the exit fee.

(2) Payments made to dissenting stockholders who own common stock or participation certificates referred to in paragraph (c)(1) of this section shall be made on the following basis. If the adjusted book value of the common stock is less than or equal to the par or stated value of the stock, the full amount of the payment shall be in cash. If the adjusted book value of the common stock is greater than its par or stated value, the association:

(i) Shall pay in cash an amount equal to the par or stated value of the stock or participation certificate; and

(ii) Shall cause or otherwise provide for the successor institution to issue on the date of termination subordinated debt to the stockholder in an amount equal to the amount by which the book value exceeds the par or stated value of the stock or participation certificate. Such subordinated notes shall have a maturity date not in excess of 7 years after the date of issuance, shall have a priority on liquidation ahead of all equity shares but shall be subordinated to the claims of

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all other creditors, and shall carry a rate of interest that shall be not less than the rate for debt of comparable maturity issued by the Treasury of the United States plus 1 percent.

(d) If the association has adopted bylaws in accordance with §611.1210(e), dissenting stockholders who own common stock or participation certificates issued in accordance with such bylaws shall be paid in cash an amount equal to the lesser of the par or adjusted book value of such stock or certificates.

(e) For the purposes of this section, common stock consists of voting stock, non-voting stock that was formerly voting stock, and stock that has no priority of payment over any other class upon liquidation.

(f) The notice to stockholders and other holders of equity interests required in §611.1220(e) shall include the following information:

(1) A statement of the rights of dissenting stockholders as specified in paragraph (a) of this section;

(2) The current book and par value per share, and the expected book and market value of the stockholder's pro rata interest in the successor institution; and

(3) An explanation of the procedure by which stockholders may exercise dissenters' rights and the form they shall return to the terminating association informing it of their intent to exercise such rights. The notification form by which stockholders may exercise dissenters' rights shall include the date by which the form must be returned to the terminating association, as specified in paragraph (b) of this section, and a place for stockholders to mark or indicate that they intend to exercise dissenters' rights. The notification form shall be a convenient method for the stockholders to notify the association and may consist of, but is not limited to, a postcard or pre-printed return envelope.

(g) An explanation that dissenting stockholders shall have until 30 days following notification of their dissenters' rights to request retirement of their stock or participation certificates. The stockholders' election to retire stock shall be rescinded in a petition for reconsideration is successful.

(h) An explanation that maintenance of a borrowing relationship with the successor institution shall not be required as a condition for owning stock in the successor institution, unless otherwise directed by the bylaws of the successor institution.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§611.1266 Loan refinancing by borrowers.

(a) All loans and loan assets of the terminating association shall become assets of the successor institution unless they have been sold by the terminating association to another lending institution or refinanced by the borrower.

(b) If an association has been designated to serve the territory of the terminating association prior to the mailing of the information statement, or if an association that offers credit services of the same type as the terminating association is already chartered to serve the territory, such association shall be identified in the information statement. In addition, such association shall provide the terminating association with the following information:

(1) The name and address of the association office that the borrower may contact;

(2) An explanation of the procedures to apply for financing with the association and the procedures by which the loan may be transferred to the association;

(3) An explanation of the stock purchase requirements of the new association; and

(4) Any other information the association wishes to include or routinely provides to new borrowers.

(c) If the terminating association receives the information required in paragraph (b) of this section prior to the mailing of the information statement to borrowers, the terminating association shall include such information in the information statement. If an association has not been designated to serve the territory or if the terminating association does not receive the information required in paragraph (b) of this section prior to the mailing of

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the information statement, the terminating association shall furnish each borrower with the address and telephone number of the funding bank with instructions that the bank may be contacted in the future to determine the name and address of the association(s) that will serve the territory in the future.

(d) The terminating association shall provide credit and loan information to the association designated to serve the territory upon the borrower's request, in accordance with §§618.8300 through 618.8325, and take such other steps as are necessary to facilitate the transfer of the loan to the association.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

§611.1270 Continuation of borrower rights.

Terminating associations which maintain an OFI relationship with the Farm Credit bank shall comply with borrower rights provisions contained in part 614, subparts K, L, M and N of this chapter. The terminating association may not require a waiver of applicable borrower rights provisions as a condition of ownership interest in and continued financing by the successor institution.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

PART 612—STANDARDS OF CONDUCT

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612.2270 Purchase of System obligations.

AUTHORITY: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

SOURCE: 59 FR 24894, May 13, 1994, unless otherwise noted.

§612.2130 Definitions.

For purposes of this part, the following terms are defined:

(a) Agent means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

(b) A conflict of interest or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

(c) Controlled entity and entity controlled by mean an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

(d) Director means a member of a board of directors.

(e) Employee means any salaried officer or part-time, full-time, or temporary salaried employee.

(f) Entity means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution, except System institutions.

(g) Family means an individual and spouse and anyone having the following relationship to either: parents, spouse, son, daughter, sibling, step-parent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

(h) Financial interest means an interest in an activity, transaction, property, or relationship with a person or