

§611.1240

§611.1240 Voting record date and stockholder approval.

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

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

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

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

(e) *Voting procedures.* The voting procedures must comply with §611.340. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

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

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

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

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the notice of the results of the termination vote.

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

[71 FR 44420, Aug. 4, 2006, as amended at 75 FR 18743, Apr. 12, 2010]

§611.1245 Stockholder reconsideration.

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

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

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

§611.1246 Filing of termination application and its contents.

(a) *Filing of termination application.* Send us your termination application no later than 90 days after you send us notice of the stockholder vote approving the termination. Please send us an

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original and five copies of the termination application for review and approval. If you send us the termination application in electronic form, you must send us at least one hard copy with original signatures.

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

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

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

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

§ 611.1247 FCA review and approval—termination.

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

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

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

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

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

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

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

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

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

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

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

(2) Your proposed termination date;

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

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

§ 611.1250 Preliminary exit fee estimate.

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

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

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

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