

## Farm Credit Administration

## §611.1223

are reasonable in light of the circumstances. A request by a director or directors for the institution to pay such expenses cannot be denied unless the board of directors, by at least a two-thirds vote of the full board (the total number of current directors), denies the request. The institution must act on any request in a timely manner. For any denial of payment, the board must provide notice to the FCA within 1 business day of the denial, fully document the reasons for such a denial, and ensure that the institution discloses the nature of the request and the reasons for any denial to the terminating institution's equity holders in the plan of termination.

### §611.1219 Prohibited acts.

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

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

### §611.1220 Termination resolution.

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

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

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

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

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

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

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

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

(2) A copy of the charter application for the successor institution, with any exhibits or other supporting information; and

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

### §611.1223 Plan of termination—contents.

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

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

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

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

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

(3) The effect of those changes;

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

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

(6) The estimated termination date.

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

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

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

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

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

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

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

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

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

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

(i) Whether the successor institution will require a borrower to hold an equity

interest as a condition for having a loan; and

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

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

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

(11) *Loan refinancing by borrowers.*

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

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

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

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

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

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

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

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

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

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

- (i) Interest rates and fees;
- (ii) Collection policies;
- (iii) Services provided; and
- (iv) Any other item that would affect a borrower's lending relationship with the successor institution, including whether a stockholder's ability to borrow from the institution will be restricted.

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

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

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

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

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

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

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

(23) *Financial information.*

(i) Present the following financial data:

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

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

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

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

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

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

(iii) The financial statements must include either:

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

(B) A signed opinion by an independent certified public accountant

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that the various financial statements have been examined in conformity with generally accepted auditing standards and included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the institution in conformity with GAAP applied on a consistent basis, except as otherwise disclosed.

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

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

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

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

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

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

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

(1) Any material change to information in the plan of termination, including financial information, that occurs

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between the date you file the plan of termination and the termination date;

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

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

### §611.1230 FCA review and approval—plan of termination.

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

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

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

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

### §611.1235 Plan of termination—distribution.

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

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