

## § 611.1200

(b) *System institutions' obligations.* All System institutions with grandfathered UBEs:

(1) Remain subject to their conditions of approval;

(2) Are subject to the ongoing requirements of § 611.1156 and the disclosure and reporting requirements of § 611.1157; and

(3) May not change or expand the authorized business activity, service, or function of the UBE as approved by FCA, add or increase the level of non-System ownership in the UBE to the extent such ownership is authorized under § 611.1153(j), or change control of the UBE as control is defined in § 611.1151 without giving written notice of such changes to FCA at least 10 business days in advance of any such change or expansion.

(4) A System institution may not proceed with any change or expansion as defined in paragraph (b)(3) of this section if the FCA notifies the institution before the end of the 10 business day advance notice period that the proposed change or expansion is material and must be submitted for FCA approval under the provisions of § 611.1155.

(c) *System institution investments or reinvestments in grandfathered UBEs.* System institutions investing for the first time in grandfathered UBEs or reinvesting after having previously divested their equity investment must provide notice to FCA or obtain FCA approval under either the notice provision in § 611.1154 or the approval provision in § 611.1155 depending on the function, service, or activity of the grandfathered UBE in which the institution seeks to invest or reinvest.

### Subparts K–O [Reserved]

### Subpart P—Termination of System Institution Status

SOURCE: 71 FR 44420, Aug. 4, 2006, unless otherwise noted.

#### § 611.1200 Applicability of this subpart.

The regulations in this subpart apply to each bank and association that desires to terminate its System institution status and become chartered as a

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bank, savings association, or other financial institution.

#### § 611.1205 Definitions that apply in this subpart.

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

*Business days* means days the FCA is open for business.

*Days* means calendar days.

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

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

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

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

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

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

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

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

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

(i) Send an advance notice to all equity holders stating you are taking steps to terminate System status. Immediately upon mailing the notice to

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equity holders, you must also place it in a prominent location on your Web site. The advance notice must describe the following:

(A) The process of termination;

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

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

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

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

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

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

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

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

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

(2) For any equity holders who ask to have their equities retired, explain

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

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

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

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

### §611.1211 Special requirements.

(a) *Special assessments, analyses, studies, and rulings.* At any time after we receive your commencement resolution, and as we deem necessary or useful to evaluate your proposal, we may