

**77 FR 3172, 01/23/2012**

**Handbook Mailing HM-12-1**

[6705-01-P]

**FARM CREDIT ADMINISTRATION**

**12 CFR Parts 611, 612, 619, 620 and 630**

RIN 3052-AC41

**Compensation, Retirement Programs, and Related Benefits**

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, us, we, or our) proposes to amend our regulations related to Farm Credit System (System) bank and association disclosures to shareholders and investors. The proposed rule would require reporting of supplemental retirement plans, a discussion of the link between senior officer compensation and performance, and timely and transparent reporting to shareholders of significant events that occur between annual reporting periods. We believe the proposed changes will provide full, transparent and consistent disclosures to shareholders. The proposed rule would identify the minimum responsibilities a compensation committee must perform to ensure it continues to exercise good stewardship, and require that System banks and associations provide for a nonbinding, advisory vote on senior officer compensation in order to engage shareholders in the management and control of their institution. Also, the proposed rule would bifurcate existing annual reporting requirements at § 620.5 and make other conforming technical changes.

**DATES:** Submit comments on or before March 23, 2012.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we no longer accept comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send an e-mail to [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- FCA Web site: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration,

1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at <http://www.fca.gov>. Once you are in the Web site, select “Public Commenters,” then “Public Comments,” and follow the directions for “Reading Submitted Public Comments.” We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:**

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or

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**SUPPLEMENTARY INFORMATION:**

**I. Objective**

The objectives of this proposed rule are to:

- Improve the transparency and completeness of disclosures in System institution annual reports or annual meeting information statements (collectively, Report) by requiring disclosure of all components of senior officer<sup>1</sup> compensation and retirement benefits;
- Promote the continued safety and soundness of System institutions by requiring certain oversight responsibilities of compensation committees;
- Strengthen timely communication with System shareholders on significant events that occur between annual reporting periods;
- Provide shareholders with a clear and complete understanding of their institution’s obligations and commitments related to supplemental retirement benefit plans (SRP) for employees other than the senior officer group; and
- Encourage member participation in the control and management of their institution by providing voting shareholders an opportunity to cast a nonbinding, advisory vote on senior officer compensation.

**II. Background**

The Farm Credit Act of 1971, as amended (Act),<sup>2</sup> authorizes the FCA to issue regulations implementing the Act’s provisions.<sup>3</sup> Our regulations are intended to ensure the safe and sound operations of System institutions and to govern the disclosure of financial information to shareholders of, and investors in, the System. Congress explained in section 514 of the Farm Credit Banks and Associations

Safety and Soundness Act of 1992 (1992 Act)<sup>4</sup> that disclosures of financial information and compensation paid to senior officers, among other disclosures, provide System shareholders with information necessary to better manage their institution and make informed decisions regarding the operation of their institution.

Section 1.1(b) of the Act sets forth the objective to continue to encourage owners-borrowers to participate in the management, control, and ownership of their cooperative. In an October 14, 2010, Resolution of the Farm Credit Administration Board, we declared our commitment to support the cooperative business model and structure of System banks and associations.<sup>5</sup> The FCA emphasizes the cooperative structure and principles by advancing regulatory proposals that encourage borrowers to participate in the management, control and ownership of their institution.

#### **A. Comments Received**

On November 18, 2010, we issued an advance notice of proposed rulemaking (ANPRM) on disclosure of senior officer compensation and related topics in order to gather information for the development of a proposed rulemaking.<sup>6</sup> We received 99 comment letters in response to the ANPRM from individuals and entities associated with the System, including the Farm Credit Council (FCC), acting for its membership, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). We reviewed all comment letters and evaluated their recommendations in recognition of existing law and policy considerations and the cooperative nature of the System. We are proposing rules and amendments related to senior officer compensation disclosures and related topics that were discussed in the ANPRM. Other topics in the ANPRM not included in this rulemaking may be considered in future rulemakings.<sup>7</sup>

We are actively reviewing the authority of the Funding Corporation's System Audit Committee (SAC) to have "unfettered ability to engage outside advisors." Section 630.6 authorizes the Funding Corporation board to deny, by a two-thirds majority vote of the full board, any SAC request for resources. The SAC requested we consider amending our regulations to remove this authority. We addressed this issue in the ANPRM and most commenters responded that it would be imprudent to provide absolute discretion on the use of resources to any bank or association board committee. The FCC expressed the view of its membership that existing FCA regulations appropriately balance audit committee need with the board's ultimate responsibility to the customer-shareholder for the safety and financial stability of the institution. However, the FCC also noted that its membership supported the Funding Corporation's request. The SAC's response to the ANPRM was that the SAC believed it must have every resource it requires at its disposal to effectively perform its function. We are not proposing changes to this authority in this rulemaking, but may revisit the matter in future rulemakings.

#### **B. Proposed Rule**

We periodically review and update our disclosure regulations to ensure they are appropriate for current business practices, provide shareholders with necessary information, and provide investors with information necessary to assist them in making investment decisions. In keeping with today's changing economic and business environments, and in accordance with the findings of Congress under the 1992 Act and the FCA Board Resolution of October 14, 2010, we believe it is appropriate to review and update our rules on senior officer compensation disclosures and other related topics. We believe that banks and associations can continue to support the cooperative business model, fulfill the System's public policy mission in a safe and sound manner, and best serve their members by providing shareholders:

- Complete disclosure that allows them to understand senior officer compensation and retirement policies and practices and all compensation and retirement benefit obligations;

- Timely and transparent communication on significant or material events affecting their institution; and
- A nonbinding, advisory vote on senior officer compensation.

We believe the proposed rule continues to balance meaningful disclosures, committee oversight, and shareholder rights with institution safety and soundness.

### **III. Section-by-Section Analysis**

#### **A. Bifurcation of Annual Reporting Requirements Sections [existing § 620.5(h) through (k); new § 620.6]**

To enhance the clarity and organization of our rules, we propose moving the disclosure requirements for directors and senior officers in § 620.5(h) through (k) to new § 620.6. Also, we propose that § 620.5(h) contain a reference to § 620.6, stating that the presentation of the § 620.6 disclosures would continue to be required in the annual report. We propose no changes to the current requirements of existing § 620.5(h), (j), and (k), except for minor rewording of the language and cross citations to recognize the proposed new locations at § 620.6(a), (b), (d), (e), and (f). However, in the process of moving § 620.5(h) through (k) to new § 620.6, some regulatory language is proposed to be changed in existing § 620.5(i) to remove redundancy and enhance clarity. Specifically, we propose clarifying how highly compensated employees, who are not senior officers, are treated in the Summary Compensation Table (Compensation Table) at new § 620.6(c)(2)(i).

Also, we propose clarifying where to disclose the required statement that the information on compensation for any individual senior officer, as disclosed in the Compensation Table, is available to shareholders upon request. In new § 620.6(c)(2)(ii), we propose that the statement must be presented directly beneath the Compensation Table because we believe the notice of this right should be in close proximity to the related disclosure. We propose new disclosure requirements that would be contained in new § 620.6(c) and are discussed in Part III.B. of the preamble to this proposed rule.

As conforming technical changes, we propose changing references to the annual report's director and senior officer compensation and conflicts of interest disclosures, made in other areas of our rules, to their location in new § 620.6. Specifically changing references contained in § 611.330(b) of our rules from § 620.5(j) and (k) to § 620.6(e) and (f); changing references contained in § 612.2145(a)(2) of our rules from § 620.5(k) to § 620.6(f); changing references contained in § 612.2155(a)(2) of our rules from § 620.5(k) to § 620.6(f); adding § 620.6 to the references contained in §§ 612.2165(b)(12) and 620.4(c); renumbering existing § 620.5(l) through (n) as (i) through (k); and changing references in § 620.21(a)(3)(i) of our rules from § 620.5(j) (“Transactions with senior officers and directors”) to § 620.6(e) and § 620.5(k) (“Involvement in certain legal proceedings”) to § 620.6(f).

#### **B. Enhanced Disclosures of Senior Officer Compensation [§ 620.5(i) and new § 620.6(c)]**

Existing § 620.5(i) requires that compensation paid to or earned by senior officers be disclosed in the Compensation Table, and include discussion of benefits paid in connection with resignation, retirement, or termination.

In developing this proposed rule, we recognized that:

- Compensation and retirement benefit practices at many System institutions are increasingly

more complex and diverse;

- Our current disclosure requirements may not capture all current practices; and
- Disclosures should include a clear discussion of the relationship between the risks and rewards of compensation practices.

Consequently, we believe our disclosure rules should be amended to ensure that all such practices are addressed in an institution's disclosure of senior officer compensation.

In new § 620.6(c)(4), we propose requiring that institutions disclose information related to supplemental executive retirement plans (SERP), if provided to chief executive officers (CEOs), senior officers or other highly compensated employees (collectively, senior officers). If the CEO and senior officers participate solely in pension and retirement plans offered to all employees, the disclosures would not be required. The information to be disclosed would include, at a minimum:

- Funded and unfunded present value of accumulated benefits for all CEO and senior officers' pension and retirement benefit plans, including the SERP.
- Years of credited service for the CEO and for the senior officers.
- Vested and unvested dollar amounts.

We propose that the disclosures be included in a separate pension and retirement benefits table, and that it be presented in the report with the Compensation Table.

In addition to requiring disclosure of SERPs, we propose institutions:

- Include all compensation, benefit and retirement plans when discussing compensation programs;
- Describe the overall risk and reward structure of compensation, benefit and retirements plans; and
- Discuss the link between the CEO's and senior officers' total compensation, as reported, and both the institution's overall performance and the CEO's and senior officers' performance.

In making these disclosures, we would expect an institution to discuss the criteria used in determining its overall performance (e.g., capital and risk management, credit risk and risk exposure to earnings, liquidity management, and compliance with the general financing agreement). Also, we would expect institutions to discuss the benchmarks or other factors used to determine compensation, including incentive-based compensation. Disclosures would be specific to the institution, rather than being general or boilerplate.

We further propose at new § 620.6(c)(3)(ii)(B) that institutions disclose in the Compensation Table the dollar amount of tax reimbursements or tax payments provided by the institution to senior officers. The disclosure would be classified as a perquisite and other personal benefit and would be reported in the period in which payment is made. We are not proposing to change the threshold for perquisite disclosures.

We believe improved transparency and consistency in disclosures of senior officer compensation

provides meaningful and complete disclosure to members-owners and investors. Enhanced disclosures assist members-owners and investors in making informed decisions regarding the financial condition and operations of the institution.

We also propose adding a new § 619.9335 to our general definition rules to define SRP and SERP. A SRP or SERP would be defined to mean a nonqualified retirement plan that provides benefits above and beyond those covered by other retirement plans for all employees, and that is funded in whole or in part by the institution.

### **C. Compensation Committee Responsibilities [ §§ 620.31 and 630.6(b) ]**

Our existing rules at §§ 620.31 and 630.6(b) require a compensation committee to review and approve the overall compensation programs for senior officers and to review the compensation policies and plans for all employees. Our July 9, 2009, FCA Bookletter, “Compensation Committees” (BL-060), provides guidance on how compensation committees should fulfill their duties. However, we believe it is appropriate to enhance our regulations to include the minimum responsibilities a compensation committee must perform in order to carry out its duties.

Therefore, in order that a compensation committee continues to effectively fulfill its stewardship role, maintain effective and active oversight, and ensure compensation and retirement benefit practices do not jeopardize the institution’s safety and soundness, we propose clarifying that the compensation committee is accountable for:

- Monitoring the terms and provisions of the incentive-based compensation programs for senior officers,
- Analyzing the institution’s projected long-term obligations for compensation and retirement benefits, and
- Balancing financial rewards to senior officers against the risks to the institution.

The proposed rule would amend our regulations at §§ 620.31(b) and 630.6(b)(2) to enhance compensation committee responsibilities to emphasize that the committee must ensure that:

- CEO and senior officers’ compensation promotes the continued safety and soundness of the institution and supports the institution’s long-term business strategy and goals,
- Risks to the institution and the financial rewards to the CEO and senior officers are balanced (e.g., compensation and benefits are not excessive relative to the results of operations and financial condition of the institution),
- The institution’s projected total long-term compensation and retirement obligations for the CEO and senior officers are analyzed, and
- The compensation of employee groups, other than the CEO and senior officers, do not pose an imprudent risk to the institution (e.g., loan officers).

In addition, we emphasize that compensation committees should ensure that incentive-based compensation programs:

- Are not unreasonable or disproportionate to the services performed, and
- Are structured so that the payout schedule considers the potential for future losses or risks to the institution from services performed in the current period.

Under the proposed rule, the compensation committee would be required to document in meeting minutes its actions related to the proposed enhanced responsibilities. Documenting its actions would facilitate board review of how the committee carried out its responsibilities and provide the current committee with an understanding of prior committee actions.

For organizational reasons, we propose moving the requirements that all compensation committee members must be members of the board of directors and that the compensation committee report only to the board. The requirements would be moved to the section that discusses the formation of a compensation committee. Also, we propose replacing “function” with “perform its duties” in §§ 620.31(c) and 630.6(b)(3) for clarification.

#### **D. Notice to Shareholders [§§ 620.10, 620.11, and 620.15]**

In FCA Board Policy Statement, “Cooperative Operating Philosophy – Serving the Members of Farm Credit System Institutions,”<sup>8</sup> (FCA-PS-80) the FCA reaffirmed its commitment to the cooperative structure and its values and practices, including regular and relevant communication with members. As such, we believe that certain events may be of such significance or materiality to warrant communication to members-owners throughout the institution’s operating cycle. We believe that timely and transparent communication to members encourages their continued participation in the ownership, control and management of their institution.

Existing §§ 620.15 and 620.17 require that System institutions provide notice to shareholders when the institution is not in compliance with minimum permanent capital standards. This notice is a supplement to annual and quarterly reporting requirements.

In a similar manner, we propose adding a requirement in § 620.15 that significant events or circumstances occurring in interim or intervening periods be communicated to shareholders through separate notice. As proposed, notices would be made as soon as possible, but not later than 90 calendar days after occurrence. As an alternative, we propose allowing the institution to issue the notice within its quarterly report, with prominent disclosure at the front of the report.

The proposed rule would allow institutions to distribute the notice via electronic distribution (Web site) or by publication with circulation wide enough to be reasonably assured that all shareholders have timely access to the information. Also, we propose that the notice be provided to the FCA at the same time it is distributed to shareholders and that the notice be dated and signed.

The proposed rule would include a list of events that must, at a minimum, be reported. If the event would be a “significant” change to a compensation, retirement, benefit or capitalization plan, significance would be based on the change to the individual plan and not the impact of the change to the institution as a whole.

As a related change to our rules, we propose consolidating the current contents of §§ 620.15 and 620.17 on notices regarding permanent capital into § 620.17. This change would allow the placement of the above proposed notice of significant or material events to be located in § 620.15 while preserving existing requirements on notices for permanent capital. We believe the proposed consolidation would add

clarity to our rules by keeping like subject matters together and removing redundant language. It is not intended that the meaning and requirements for permanent capital notices be changed.

To conform our regulations in § 620.10, “Preparing the quarterly report,” with the proposed notice of significant or material events, we propose adding a new paragraph (c) to existing § 620.10. The proposed addition would clarify that the quarterly report may be used for notices to shareholders, except minimum permanent capital notices. We also propose adding a similar provision to § 620.11 on contents of quarterly reports, but including a proposed requirement that notices included in the quarterly report be located at the front of the report. We believe this proposed requirement preserves the objective of the notices, which is that members-owners receive timely and transparent communication of significant and material events.

**E. Disclosure of Supplemental Retirement Plans to Employees, Exclusive of the CEO and Senior Officers [§ 620.5(e)]**

We propose adding a new paragraph (4) to existing § 620.5(e) that would require disclosure of the institution’s obligations related to a SRP to employees, exclusive of any plan provided to the CEO and senior officers. The disclosure would include, at a minimum:

- A description of the plan;
- Funded and unfunded obligations of the plan; and
- Vested and unvested dollar amounts.

We believe that by disclosing an institution’s current and future supplemental benefit obligations, shareholders and investors will have a more complete understanding of the related liabilities and commitments, both on- and off-balance sheet.

**F. Nonbinding, Advisory Vote by Shareholders on Senior Officer Compensation [ §§ 611.100, 620.5(a) and 630.20(i); new §§ 611.360, 611.410, and 620.6(c)(6) ]**

Our existing regulations do not require a nonbinding, advisory vote by an institution’s shareholders on senior officer compensation. However, in FCA Informational Memorandum, “Serving the Members of Farm Credit System Institutions” (IM), dated November 4, 2010, we noted that boards of directors can encourage member participation in the management and control of the institution by engaging members as owners and communicating with members. The IM highlighted our belief that effective boards use information obtained from members to establish strategic direction for their institutions and to ensure business activities remain member-focused.

We continue to believe that a Government-sponsored enterprise comprised of cooperative institutions should continually strive to operate under high standards in order to achieve the System's public policy mission and encourage member-owner participation in their institution. Therefore, we propose adding a new § 611.410 requiring that Farm Credit banks and associations provide shareholders the opportunity to cast a nonbinding, advisory vote on senior officer compensation.

The proposed § 611.410 advisory vote would be required at banks and associations if either the CEO’s or the aggregate of all senior officers’ compensation, as disclosed in the Compensation Table, increased or decreased by 15 percent or more from the previous reporting period. The vote would not be required if the 15-percent change resulted solely from a change in the CEO or a change in the

composition of personnel included in the senior officer group. Also, we propose that associations be required to hold a nonbinding, advisory vote on compensation if 5 percent of their voting shareholders petition for it. We did not propose this additional petition requirement for banks because there are fewer shareholders at the bank level, thereby allowing a few shareholders to control the petition process.

We do not believe the vote would be burdensome to institutions since it would be required only when a 15-percent change in practice has occurred or, for associations, when 5 percent of their voting shareholders petition for the vote. We believe the proposed nonbinding, advisory vote would provide a means for shareholders to clearly express and communicate either their approval or disapproval of compensation practices for senior officers to their institution's board. The board could then use the information, as appropriate, when establishing the institution's strategic direction and ensure that it remains member-focused.

We selected 15 percent as a threshold change in compensation based on the recent range of percentage changes to bank and association CEO's and senior officers' compensation. We consider the 15-percent threshold to be reasonable. We selected 5 percent as the maximum percentage of voting shareholders required to petition their association for the vote because 5 percent is generally accepted as a criteria for assessing significance or materiality.

We are also proposing general procedures for advisory votes in new § 611.360. The proposed procedures would apply to all advisory votes held by an institution including, but not limited to, the proposed advisory vote on compensation. As proposed, advisory votes would be subject to the same confidentiality and security in voting requirements of § 611.340 and would be cast on a one-member, one-vote basis, including votes cast by shareholders of Farm Credit banks. We propose that weighted and cumulative voting not be allowed in advisory votes in order to further the objective of giving equal voice to each shareholder. Also, new § 611.360 would require that institutions develop voting procedures and provide notice to shareholders of any advisory vote and the procedures used in casting the vote. In addition, proposed § 611.360 would permit the advisory votes to be made in-person, by proxy and by mail.

We propose disclosure in the annual report when an advisory vote is held, including disclosure of the results of the vote. We propose adding a new § 620.5(a)(11) to the "Description of business" section of the annual report, requiring a discussion of the types of advisory votes held during the reporting period. We further propose that disclosure of nonbinding, advisory votes on senior officer compensation be included with senior officer compensation disclosures in new § 620.6(c)(6). This disclosure requirement is proposed to be carried forward into the System-wide report to investors at § 630.20(i).

We propose in new § 611.410(c)(6) that associations disclose that shareholders may petition for an advisory vote, disclose when a petition is received and disclose the results of the petition. The proposal would require that the disclosures be presented with the Compensation Table. We believe that providing the disclosures with the Compensation Table ensures that shareholders are aware of their right to express their opinion on senior officer compensation practices of their associations.

In addition, we propose adding a definition of "advisory vote" at § 611.100(a) to ensure a consistent meaning of the term.

## **G. Miscellaneous**

### **1. Technical Changes [ §§ 611.330(c), 611.400, 620.2(c), 620.4(c), and 620.11 ]**

Our proposed amendments require additional conforming and clarifying changes to other regulatory provisions. Likewise, in the proposed process of consolidating provisions, some regulatory language is proposed to be changed to remove redundancy and enhance clarity. We propose making the following technical and conforming changes:

a. We propose adding a definition for “business day” to § 611.100 to clarify our longstanding position that when our rules reference business day it means a day the institution is open for business, but excludes Federal holidays. As a technical change, we propose renumbering existing § 611.100 paragraphs (a) through (f) as (c) through (h).

b. In subpart D of part 611, we propose revising the name of the subpart from “Rules for Compensation of Board Members” to “Compensation Practices of Farm Credit Banks and Associations.” The change will clarify that the provisions of subpart D relate to various compensation issues at the bank and association level and not just to bank board members. As a conforming change, in § 611.400, we propose revising the name of the section from “Compensation of bank board members” to “Compensation of Farm Credit bank board members” to align terminology to that used in our general definitions of part 619. We also propose replacing the phrase “Farm Credit System bank” with “Farm Credit bank” everywhere it appears to update the section for the same reason.

c. We propose updating the language in § 611.400(b) regarding annual inflationary changes in the statutory salary limit for Farm Credit bank directors. The proposed change would continue to require that we communicate the annual changes to the System, but remove the requirement that we use a booklet to do so. This will expedite communication of the information.

d. We propose clarifying that the director-nominee disclosures discussed in § 611.330(c)(1) relate to the annual meeting information statement by providing a corresponding rule citation to § 620.21(b).

e. We propose changing the language in § 620.2(c) regarding the electronic delivery of reports to shareholders to clarify that the provision applies only to those reports individually sent to shareholders, not all reports.

f. We propose a minor grammatical change to § 620.4(c) on contents of the annual report by breaking out the sentence into two sentences. No change to the meaning of the paragraph is intended.

g. We propose to reorganize and renumber the existing provisions of § 620.11 to enhance clarity. No changes to the meaning of existing language is proposed, although we propose adding an additional provision to this section on incorporating shareholder notices into a quarterly report, as discussed earlier.

## **2. Incorporating by Reference [§ 620.2(d)]**

We propose changing the language in § 620.2(d), which allows System institutions to incorporate by reference in their reports. The proposed change is to specify that information disclosed in any part of the report may be incorporated by reference in that report unless instructions state otherwise. In a prior rulemaking, we explained that § 620.2(d) allowed institutions to provide information required to be in a specific section of the annual report through a reference to another section of the report.<sup>9</sup> The proposed limit on incorporating by reference would only exist when a rule limits the location of a specific disclosure.

## **3. Signatures on reports [§ 620.10(c)]**

In developing this proposed rule on disclosures in annual and quarterly reports, we noticed an inadvertent omission in the preparation requirements of quarterly reports. While quarterly reports are not required to be mailed to shareholders, we have always expected them to contain signatures and certifications used for other reports. However, existing § 620.10(a) does not clearly state this requirement. Therefore, we propose adding a new paragraph (a)(3) requiring quarterly reports to be signed and financial statements contained in the report to be certified as complete and accurate.

#### **IV. Regulatory Flexibility Act**

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

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<sup>1</sup>All references to senior officer(s) in this proposed rule refer to a senior officer as defined in 12 CFR 619.9310.

<sup>2</sup>Pub. L. 92-181, 85 Stat. 583 (1971), 12 U.S.C. 2001, et seq.

<sup>3</sup>12 U.S.C. 2252(a)(8), (9) and (10).

<sup>4</sup>Pub. L. 102-552, 106 Stat. 4131 (1992).

<sup>5</sup>Copies of the resolution may be obtained by contacting the FCA.

<sup>6</sup>75 FR 70619 (Nov. 18, 2010).

<sup>7</sup>These topics include the use of a compensation consultant by an institution's compensation committee and director severance benefits and related payments.

<sup>8</sup>See 75 FR 64728, Oct. 20, 2010.

<sup>9</sup>See 74 FR 28597, June 17, 2009.

## **List of Subjects**

### **12 CFR Part 611**

Agriculture, Banks, banking, Rural areas.

### **12 CFR Part 612**

Agriculture, Banks, banking, Conflict of interests, Crime, Investigations, Rural areas.

### **12 CFR Part 619**

Agriculture, Banks, banking, Rural areas.

### **12 CFR Part 620**

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

### **12 CFR Part 630**

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 612, 619, 620, and 630 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

## **PART 611--ORGANIZATION**

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

**Authority:** Secs. 1.2, 1.3, 1.4, 1.5, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.17, 6.9, 6.26, 7.0-7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2252, 2278a-9, 2278b-6, 2279a-2279f-1, 2279aa-5(e)); secs. 411 and 412 of Pub. L. 100-233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100-399, 102 Stat. 989, 1004.

### **Subpart A--General**

2. Section 611.100 is amended by:

- a. Redesignating existing paragraphs (a) through (f) as paragraphs (c) through (h), respectively;
- and
- b. Adding new paragraphs (a) and (b) to read as follows:

#### **§ 611.100 Definitions.**

\* \* \* \* \*

(a) *Advisory vote* means a nonbinding vote by the voting stockholders on certain events of the institution, including compensation practices.

(b) *Business day* means a day the institution is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

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### **Subpart C--Election of Directors and Other Voting Procedures**

### **§ 611.330 [Amended]**

3. Section 611.330 is amended by:
  - a. Removing the reference “§ 620.5(j) and (k)” and adding in its place, the reference, “§ 620.6(e) and (f)” in the first sentence of paragraphs (b)(1) and (b)(2); and
  - b. Adding the words “in accordance with § 620.21(b)” to the end of paragraph (c)(1).
4. Subpart C is amended by adding a new § 611.360 to read as follows:

#### **§ 611.360 Stockholder advisory votes.**

- (a) Each Farm Credit bank and association must establish and maintain written procedures to implement advisory votes. The procedures, at a minimum, must:
  - (1) Identify the subject of the advisory vote.
  - (2) Establish the timing, manner, and notice of the vote.
    - (i) If the vote will be held in connection with a stockholder meeting or director election, notice of the advisory vote must be part of the Annual Meeting Information Statement, pursuant to § 620.21(d).
    - (ii) The vote may be in-person, by proxy, or by mail, or any combination thereof.
  - (3) For associations, explain the process for petitioning for an advisory vote.
- (b) Advisory votes are subject to the requirements of § 611.340 and the confidential voting provisions of section 4.20 of the Act (12 U.S.C. 2208).
- (c) Advisory votes must be cast using a “one-member, one-vote” voting scheme and are not subject to the provisions in § 615.5230 allowing weighted, cumulative, and other voting schemes.

#### **Subpart D--Compensation Practices of Farm Credit Banks and Associations**

5. Revise the heading of subpart D to read as set forth above.

### **§ 611.400 [Amended]**

6. Section 611.400 is amended by:
  - a. Removing the words “Farm Credit System bank” and adding in their place “Farm Credit bank” in paragraphs (a) and (d)(1); and
  - b. Removing the words “distribute a booklet to all FCS banks that communicates” and adding in their place the word “communicate” in the last sentence of paragraph (b).
7. Subpart D is amended by adding a new § 611.410 to read as follows:

#### **§ 611.410 Compensation of senior officers.**

- (a) If compensation for the chief executive officer either increases or decreases 15 percent or more from the previous reporting period, then the bank or association must present the compensation to voting stockholders for an advisory vote. Such advisory vote must be held in accordance with the provisions of § 611.360. Advisory votes on compensation resulting solely from a change in the chief executive officer during the reporting period are not required.
- (b) If senior officer compensation, as reported in the aggregate, either increases or decreases 15 percent or more from the previous reporting period, then the bank or association must present the compensation to voting stockholders for an advisory vote. Such advisory vote must be held in accordance with the provisions of § 611.360. Advisory votes on compensation resulting solely from a change in senior officers included in the aggregate during the reporting period are not required.
- (c) Each association must hold an advisory vote on compensation paid to chief executive officers, or senior officers in the aggregate, in accordance with the provisions of § 611.360 when 5 percent of the

association's voting stockholders petition for an advisory vote.

(d) Each association must disclose in its annual report to shareholders the authority to petition for an advisory vote on senior officer compensation. The disclosure must also state if a petition was submitted during the reporting period, disclosing if it was certified and a vote held and, if applicable, the results of the vote.

## **PART 612--STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS**

8. The authority citation for part 612 continues to read as follows:

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

### **Subpart A--Standards of Conduct**

#### **§ 612.2145 [Amended]**

9. Section 612.2145 is amended by removing the reference “§ 620.5(k)” and adding in its place, the reference “§ 620.6 (f)” in paragraph (a)(2).

#### **§ 612.2155 [Amended]**

10. Section 612.2155 is amended by removing the reference “§ 620.5 (k)” and adding in its place, the reference “§ 620.6 (f)” in paragraph (a)(2).

#### **§ 612.2165 [Amended]**

11. Section 612.2165 is amended by removing the reference “§ 620.5” and adding in its place “§§ 620.5 and 620.6” in paragraph (b)(12).

## **PART 619--DEFINITIONS**

12. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.4, 1.5, 1.7, 2.1, 2.2, 2.4, 2.11, 2.12, 3.1, 3.2, 3.21, 4.9, 5.9, 5.17, 5.19, 7.0, 7.1, 7.6, 7.8 and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2013, 2015, 2072, 2073, 2075, 2092, 2093, 2122, 2123, 2142, 2160, 2243, 2252, 2254, 2279a, 2279a-1, 2279b, 2279c-1, 2279f); sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

13. Part 619 is amended by adding a new § 619.9335 to read as follows:

#### **§ 619.9335 Supplemental retirement plan or supplemental executive retirement plan.**

A nonqualified retirement plan that provides benefits in addition to those covered by other retirement plans for all employees and funded in whole or part by a Farm Credit bank or association.

## **PART 620--DISCLOSURE TO SHAREHOLDERS**

14. The authority citation for part 620 is revised to read as follows:

**Authority:** Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a,

2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

### **Subpart A--General**

15. Section 620.2 is amended by revising paragraphs (c) and (d) to read as follows:

#### **§ 620.2 Preparing and filing reports.**

\*\*\*\*\*

(c) The reports sent to shareholders must comply with the requirements of § 620.3 of this part and shareholders must agree to electronic delivery of those reports.

(d) Information in any part of a report may be incorporated by reference in answer or partial answer to any other item of the report, unless instructions for the report state otherwise.

\*\*\*\*\*

### **Subpart B--Annual Report to Shareholders**

16. Section 620.4 is amended by revising paragraph (c) to read as follows:

#### **§ 620.4 Preparing and providing the annual report.**

\*\*\*\*\*

(c) The report must contain, at a minimum, the information required by §§ 620.5 and 620.6. In addition, the report must contain such other information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

17. Section 620.5 is amended by:

a. Adding new paragraphs (a)(11) and (e)(4);

b. Revising paragraph (h);

c. Removing paragraphs (i), (j), and (k); and

d. Redesignating existing paragraphs (l), (m), and (n) as paragraphs (i), (j), and (k), respectively,

to read as follows:

#### **§ 620.5 Contents of the annual report to shareholders.**

\*\*\*\*\*

(a) *Description of business.*

\*\*\*\*\*

(11) The types of advisory votes held during the reporting period and the results of the vote(s).

\*\*\*\*\*

(e) *Description of liabilities.*

\*\*\*\*\*

(4) Describe any supplemental retirement plans funded by the institution on behalf of employees whose benefits are not included in the Pension Benefits Table in § 620.6(c) of this part. Disclose the present value of the aggregate accumulated benefits of funded, unfunded, and unvested obligations related to the plan(s).

\*\*\*\*\*

(h) *Directors and senior officers.* In a separate section of the annual report, make the disclosures required in § 620.6 of this part.

\*\*\*\*\*

18. Subpart B is amended by adding a new § 620.6 to read as follows:

**§ 620.6 Disclosures in the annual report to shareholders relating to directors and senior officers.**

**(a) *General.***

(1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each director, and the position, title, and date each senior officer commenced employment in his or her current position.

(2) Briefly describe the business experience during the past 5 years of each director and senior officer, including each person's principal occupation and employment during the past 5 years.

(3) For each director and senior officer, list any other business interest where the director or senior officer serves on the board of directors or as a senior officer. Name the position held and state the principal business in which the business is engaged.

(b) *Compensation of directors.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and noncash compensation). Noncash compensation with an annual aggregate value of less than \$5,000 does not have to be reported. State the total cash and reportable noncash compensation paid to all directors as a group during the last fiscal year. For the purposes of this paragraph, disclosure of compensation paid to and days served by directors applies to any director who served in that capacity at any time during the reporting period. If applicable, describe any exceptional circumstances justifying the additional director compensation as authorized by § 611.400(c) of this chapter. For each director, state:

(1) The number of days served at board meetings;

(2) The total number of days served in other official activities, including any board committee(s);

(3) Any additional compensation paid for service on a board committee, naming the committee;

and

(4) The total cash and noncash compensation paid to each director during the last fiscal year.

Reportable compensation includes cash and the value of noncash items provided by a third party to a director for services rendered by the director on behalf of the reporting Farm Credit institution. Noncash compensation with an annual aggregate value of less than \$5,000 does not have to be reported.

(c) *Compensation of senior officers.* Disclose the information on senior officer compensation and compensation plans as required by this paragraph. The institution must disclose the total amount of compensation paid to senior officers in substantially the same manner as the tabular form specified in the Summary Compensation Table (Compensation Table), located in paragraph (c)(3) of this section.

(1) For each of the last 3 completed fiscal years, report the total amount of compensation paid and the amount of each component of compensation paid to the institution's chief executive officer (CEO), naming the individual. If more than one person served in the capacity of CEO during any given fiscal year, individual compensation disclosures must be provided for each CEO.

(2) For each of the last 3 completed fiscal years, report the aggregate amount of compensation paid, and the components of compensation paid, to all senior officers as a group, stating the number of officers in the group without naming them.

(i) If applicable, when any employee who is not a senior officer has annual compensation at a level that is among the five highest paid by the institution during the reporting period, include the highly compensated employee(s) in the aggregate number and amount of compensation reported in the Compensation Table.

(ii) The report containing the aggregate compensation disclosure must include a statement that disclosure of information on the total compensation paid during the last fiscal year to any senior officer, or to any other employee included in the aggregate, is available and will be disclosed to shareholders of the institution and shareholders of related associations (if applicable) upon request. This statement must be located directly beneath the Compensation Table.

(3) The institution must complete the Compensation Table, or something substantially similar, according to the following instructions:

**Summary Compensation Table**

			Annual			
Name of individual or number in group  (a)	Year  (b)	Salary  (c)	Bonus  (d)	Deferred/perquisite  (e)	Other  (f)	Total  (g)
CEO	20XX 20XX 20XX	\$	\$	\$	\$	\$
Aggregate No. of Senior Officers (& other highly compensated employees, if applicable)  (X) (X) (X)	20XX 20XX 20XX					

(i) Amounts shown as “Salary” (column (c)) and “Bonus” (column (d)) must reflect the dollar value of salary and bonus earned by the senior officer during the fiscal year. Amounts contributed during the fiscal year by the senior officer pursuant to a plan established under section 401(k) of the Internal Revenue Code, or similar plan, must be included in the salary column or bonus column, as appropriate. If the amount of salary or bonus earned during the fiscal year is not calculable by the time the report is prepared, the reporting institution must provide its best estimate of the compensation amount(s) and disclose that fact in a footnote to the table.

(ii) Amounts shown as “deferred/perquisites” (column (e)) must reflect the dollar value of other annual compensation not properly categorized as salary or bonus, including but not limited to:

(A) Deferred compensation earned during the fiscal year, whether or not paid in cash; or

(B) Perquisites and other personal benefits, including the value of noncash items, unless the annual aggregate value of such perquisites is less than \$5,000. Reportable perquisites include cash and the value of noncash items provided by a third party to a senior officer for services rendered by the officer on behalf of the reporting institution. Reportable other personal benefits include the dollar value of any tax reimbursement provided by the institution.

(iii) Compensation amounts reported under the category “Other” (column (f)) must reflect the dollar value of all other compensation not properly reportable in any other column. Items reported in this column must be specifically identified and described in a footnote to the table, including compensation relating to pensions and defined benefit plans that may also be reported in the “Pension Benefits Table” at paragraph (c)(4) of this section. “Other” compensation includes, but is not limited to:

(A) The amount paid to the senior officer pursuant to a plan or arrangement in connection with the resignation, retirement, or termination of such officer's employment with the institution;

(B) The amount of contributions by the institution on behalf of the senior officer to a vested or unvested defined contribution plan unless the plan is made available to all employees on the same basis.

(iv) Amounts displayed under "Total" (column (g)) shall reflect the sum total of amounts reported in columns (c), (d), (e), and (f).

(4) If the institution provides a defined benefit plan or a supplemental executive retirement plan (SERP) to its senior officers, the institution must complete the following Pension Benefits Table, or something substantially similar, for each plan according to the following instructions:

**Pension Benefits Table**

		Annual			
Name of individual	Years of credited service	Funded	Unfunded	Unvested	Total
CEO		\$	\$	\$	\$
Senior Officers as a Group (& other highly compensated employees, if applicable)					

(i) Report separately the present value of accumulated benefits for the CEO and the senior officer group.

(ii) Report the number of credited years of service in "Years of credited service" column.

(iii) Report the amount of the plan(s) that is unfunded in "Unfunded" column.

(iv) Report any off-balance sheet commitments, such as benefits earned but not yet vested, in the "unvested" column.

(v) Report the sum of the funded, unfunded, and unvested columns in the "Total" column.

(5) Provide a description of all compensation, retirement, incentive, performance, and other benefit plans (plans) pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future for performance during the last fiscal year, to those individuals included in the Compensation Table. The description of each plan must include, but not be limited to:

(i) A summary of how each plan operates and who is covered by the plan. The summary must include the criteria used to determine amounts payable, including any performance formula or measure, as well as the time period over which the measurement of compensation will be determined, payment schedules, and any material amendments to the plan during the last fiscal year.

(ii) The overall risk and reward structure of the plan as it relates to senior officers' compensation. The description must include, at a minimum, how each plan is compatible with and promotes the institution's goals and business strategy and the mission as a Government-sponsored enterprise.

(iii) A discussion of the relationship between the CEO and senior officers' compensation to the reporting institution's overall performance. The disclosure must also discuss the relationship between the CEO's and senior officers' compensation to their performance.

(6) In the same vicinity as the Compensation Table, discuss any advisory votes that were held under the provisions of § 611.410 of this chapter during the reporting period and the results of the vote(s). For associations, include a discussion of whether or not the vote resulted from a shareholder petition. Each association must disclose in this same location the authority of shareholders to petition for an advisory vote on CEO and senior officer compensation.

(7) Associations may disclose the information required by paragraph (c) of this section in the Annual Meeting Information Statement (AMIS) pursuant to subpart E of this part. Associations exercising this option must include a reference in the annual report stating that the senior officer compensation information is included in the AMIS and that the AMIS is available for public inspection at the reporting association offices pursuant to § 620.2(b).

(d) Travel, subsistence, and other related expenses.

(1) Briefly describe your policy addressing reimbursements for travel, subsistence, and other related expenses as it applies to directors and senior officers. The report shall include a statement that a copy of the policy is available to shareholders of the institution and shareholders of related associations (if applicable) upon request.

(2) For each of the last 3 fiscal years, state the aggregate amount of reimbursement for travel, subsistence, and other related expenses for all directors as a group.

(e) Transactions with senior officers and directors.

(1) State the institution's policies, if any, on loans to and transactions with officers and directors of the institution.

(2) Transactions other than loans. For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of the immediate family of such person, or any organization with which such person is affiliated.

(i) For transactions relating to the purchase or retirement of preferred stock issued by the institution, state the name of each senior officer or director that held preferred stock issued by the institution during the reporting period, the current amount of preferred stock held by the senior officer or director, the average dividend rate on the preferred stock currently held, and the amount of purchases and retirements by the individual during the reporting period.

(ii) For all other transactions, state the name of the senior officer or director who entered into the transaction or whose immediate family member or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed \$5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) Loans to senior officers and directors.

(i) To the extent applicable, state that the institution (or in the case of an association that does not carry loans to its senior officers and directors on its books, its related bank) has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

(A) Were made in the ordinary course of business; and

(B) were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(ii) To the extent applicable, state that no loan to a senior officer or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectability; provided that no such statement need be made with respect to any director or senior officer who has resigned before the time for filing the

applicable report with the Farm Credit Administration (but in no case later than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(iii) If the conditions stated in paragraphs (e)(3)(i) and (ii) of this section do not apply to the loans of the persons or organizations specified therein, with respect to such loans state:

(A) The name of the officer or director to whom the loan was made or to whose relative or affiliated organization the loan was made.

(B) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year.

(C) The nature of the loan(s);

(D) The amount outstanding as of the latest practicable date.

(E) The reasons the loan does not comply with the criteria contained in paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(F) If the loan does not comply with paragraph (e)(3)(i)(B) of this section, the rate of interest payable on the loan and the repayment terms.

(G) If the loan does not comply with paragraph (e)(3)(ii) of this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectability.

(f) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of any person who served as director or senior officer on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which such person was a senior officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting such person from engaging in any type of business practice.

### **Subpart C--Quarterly Report**

19. Section 620.10 is amended by:

a. Revising paragraph (a); and

b. Adding a new paragraph (c) to read as follows:

#### **§ 620.10 Preparing the quarterly report.**

(a) Each institution of the Farm Credit System must:

(1) Prepare and send to the Farm Credit Administration an electronic copy of its quarterly report within 40 calendar days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution;

(2) Publish a copy of its quarterly report on its Web site when it electronically sends the report to the Farm Credit Administration; and

(3) Ensure the report complies with the applicable provisions of §§ 620.2 and 620.3 of this part.

\* \* \* \* \*

(c) Institutions may use the quarterly report to deliver any notice required under § 620.15 of this part. Notices required under § 620.17 must be issued separately from the quarterly report, unless otherwise authorized by the Farm Credit Administration.

20. Section 620.11 is amended by:

- a. Revising the introductory text of paragraph (b), paragraphs (c) and (d); and
- b. Removing paragraphs (e) and (f) to read as follows:

**§ 620.11 Content of quarterly report to shareholders.**

\* \* \* \* \*

(b) *Rules for condensation.* For purposes of this section, major captions to be provided in the financial statements are the same as those provided in the financial statements contained in the institution's annual report to shareholders, except that the financial statements included in the quarterly report may be condensed into major captions in accordance with the rules prescribed under this paragraph. If any amount that would otherwise be required to be shown by this subpart with respect to any item is not material, it need not be separately shown. The combination of insignificant items is permitted.

\* \* \* \* \*

(c) *Required content.* A quarterly report must, at a minimum, contain the following items:

(1) *Management's discussion and analysis of financial condition and results of operations.*

Discuss material changes, if any, to the information provided to shareholders pursuant to § 620.5(g) that have occurred during the periods specified in paragraphs (c)(2)(i) and (ii) of this section. Such additional information as is needed to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (c)(2)(i) and (ii) of this section shall be provided.

(i) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial conditions from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the institution.

(ii) *Material changes in results of operations.* Discuss any material changes in the institution's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. Such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the institution has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

(2) *Interim financial statements.* The following financial statements must be provided:

(i) An interim balance sheet as of the end of the most recent fiscal quarter and as of the end of the preceding fiscal year. A balance sheet for the comparable quarter of the preceding fiscal year is optional.

(ii) Interim statements of income for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable periods for the previous fiscal year.

(iii) Interim statements of changes in protected borrower capital and at-risk capital for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(iv) For banks, interim statements of cash flows for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year. For associations, interim statements of cash flows are optional.

(3) *Other related financial items.* State that the financial statements were prepared under the

oversight of the audit committee. The interim financial information need not be audited or reviewed by a qualified public accountant or external auditor prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the institution may state that a qualified public accountant or external auditor has performed such a review under the supervision of the institution's audit committee. If such a statement is made, the report of a qualified public accountant or external auditor on such review must accompany the interim financial information.

(d) *Notices.* Institutions using the quarterly report to deliver any notice required under § 620.15 of this part must put the notice information at the beginning of the quarterly report. The notice must be conspicuous and may not be part of any footnotes to the quarterly report. Notices that are made part of the quarterly report must comply with the provisions of both this section and § 620.15.

#### **Subpart D--Notice to Shareholders**

21. Subpart D is amended by revising §§ 620.15 and 620.17 to read as follows:

##### **§ 620.15 Notice of significant or material events.**

(a) When a Farm Credit bank or association determines that it has a significant or material event, the institution must prepare and provide to its shareholders and the Farm Credit Administration a notice disclosing the event(s).

(1) Events covered under this provision include significant events defined in § 620.1(q) and material events defined in § 620.1(h).

(2) At a minimum, a notice must be issued for significant or material events involving compensation, retirement and benefit plans, capitalization plans or bylaws, results of shareholder votes, early director departures, unplanned departure of a senior officer, letters of intent to merge, changes in external auditors, and reportable Farm Credit Administration supervisory and enforcement actions.

(b) A notice issued under this section must be made as soon as possible, but not later than 90 days after occurrence of the event.

(1) Each institution must electronically provide the notice to the Farm Credit Administration at the same time as distribution of the notice to shareholders.

(2) Delivery of the notice to shareholders may be accomplished by direct communications with the shareholders, posting the notice on the institution's Web site, as part of the quarterly report to shareholders, or by publishing the notice in any publication with circulation wide enough to reasonably assure that all of the institution's shareholders have access to the information in a timely manner.

(c) Every notice must be dated and signed in a manner similar to the requirements of § 620.3(b).

(d) The information required to be included in a notice issued under this section must be conspicuous, easily understandable, complete, accurate, and not misleading.

##### **§ 620.17 Special notice provisions for events related to minimum permanent capital.**

(a) When a Farm Credit bank or association determines that it is not in compliance with the minimum permanent capital standard prescribed under § 615.5205 of this chapter, that institution must prepare and provide to its shareholders and the Farm Credit Administration a notice stating that the institution has initially determined it is not in compliance with minimum permanent capital standards. Such notice must be given within 30 days following the month end.

(b) When notice is given under paragraph (a) of this section, the institution must also notify its shareholders and the Farm Credit Administration when the institution's permanent capital ratio decreases by one half of 1 percent or more from the level reported in the original notice, or from that reported in a subsequent notice provided under this paragraph. This notice must be given within 45 days following the end of every quarter at which the institution's permanent capital ratio decreases as specified.

(c) Each institution required to prepare a notice under paragraphs (a) or (b) of this section shall provide the notice to shareholders or publish it in any publication with circulation wide enough to be

reasonably assured that all of the institution's shareholders have access to the information in a timely manner. The information required to be included in this notice must be conspicuous, easily understandable, and not misleading.

(d) A notice, at a minimum, shall include:

(1) A statement that:

(i) Briefly describes the regulatory minimum permanent capital standard established by the Farm Credit Administration and the notice requirement of paragraph (a) of this section;

(ii) Indicates the institution's current level of permanent capital; and

(iii) Notifies shareholders that the institution's permanent capital is below the Farm Credit Administration regulatory minimum standard.

(2) A statement of the effect that noncompliance has had on the institution and its shareholders, including whether the institution is currently prohibited by statute or regulation from retiring stock or distributing earnings or whether the Farm Credit Administration has issued a capital directive or other enforcement action to the institution.

(3) A complete description of any event(s) that may have significantly contributed to the institution's noncompliance with the minimum permanent capital standard.

(4) A statement that the institution is required by regulation to provide another notice to shareholders within 45 days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one half of 1 percent or more from the level reported in the notice.

#### **Subpart E--Annual Meeting Information Statements and Other Information to be Furnished in Connection with Annual Meetings and Director Elections**

22. Section 620.21 is amended by revising paragraph (a)(3)(i) to read as follows:

##### **§ 620.21 Contents of the information statement.**

(a) \* \* \*

(3) \* \* \*

(i) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.6(e), or any of the events required to be disclosed in the annual report to shareholders under § 620.6(f) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.6(e) and (f) shall be made with respect to such transactions or events in the information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.6(e) and (f) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the information statement.

\* \* \* \* \*

#### **Subpart F--Bank and Association Audit and Compensation Committees**

23. Section 620.31 is revised to read as follows:

##### **§ 620.31 Compensation committees.**

Each Farm Credit bank and association must establish and maintain a compensation committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. The compensation committee must report only to the board of directors. All compensation committees will be required to maintain records of meetings, including attendance, for at least 3 fiscal years.

(a) *Composition.* Each compensation committee must consist of at least three members and all committee members must be members of the institution's board of directors. Every member must be free

from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(b) *Responsibilities.* It is the responsibility of each compensation committee to review the compensation policies and plans for senior officers and employees and to approve the overall compensation program for senior officers. In fulfilling its responsibilities, the compensation committee must document that it:

(1) Analyzed the institution's projected long-term compensation and retirement benefit obligations and determined such obligations are appropriate to the services performed and not excessive.

(2) Reviewed incentive-based compensation programs and payments and determined that they were not unreasonable or disproportionate to the services performed and were structured so the payout schedule considered the potential for future losses or risks to the institution.

(3) Reviewed senior officer compensation, incentive and benefit programs and determined that they support the institution's long-term business strategy, as well as promote safe and sound business practices.

(4) Reviewed compensation programs designed for specific groups of employees, other than senior officers, to ensure the plan(s) pose no imprudent risk to the institution.

(c) *Resources.* Each institution must provide monetary and nonmonetary resources to enable its compensation committee to perform its duties.

## **PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM**

24. The authority citation for part 630 is revised to read as follows:

**Authority:** Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

### **Subpart A--General**

25. Section 630.6 is amended by revising paragraph (b) to read as follows:

#### **§ 630.6 Funding Corporation committees.**

\* \* \* \* \*

(b) *Compensation committee.* The Funding Corporation must establish and maintain a compensation committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. The compensation committee must report only to the board of directors. The compensation committee will be required to maintain records of meetings, including attendance, for at least 3 fiscal years.

(1) *Composition.* The committee must consist of at least three members and all members must be members of the Funding Corporation's board of directors. Every compensation committee member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(2) *Responsibilities.* It is the responsibility of the compensation committee to review the compensation policies and plans for senior officers and employees and to approve the overall compensation program for senior officers. In fulfilling its responsibilities, the compensation committee must document that it:

(i) Analyzed the Funding Corporation's projected long-term compensation and retirement benefit obligations and determined such obligations are appropriate to the services performed and not excessive.

(ii) Reviewed incentive-based compensation programs and payments and determined that they

were not unreasonable or disproportionate to the services performed and were structured so the payout schedule considered the potential for future losses or risks to the Funding Corporation.

(iii) Reviewed senior officer compensation, incentive and benefit programs and determined that they support the Funding Corporation's long-term business strategy and mission, as well as continue to promote safe and sound business practices.

(3) *Resources*. The Funding Corporation must provide monetary and nonmonetary resources to enable its compensation committee to perform its duties.

### **Subpart B--Annual Report to Investors**

26. Section 630.20 is amended by revising paragraph (i) to read as follows:

#### **§ 630.20 Contents of the annual report to investors.**

\* \* \* \* \*

(i) *Compensation of directors and senior officers*. State that information on the compensation of directors and senior officers of Farm Credit banks is contained in each bank's annual report to shareholders and that the annual report of each bank is available to investors upon request pursuant to § 630.3(g). State whether advisory votes were held in any of the disclosure entities during the reporting period and the results of such vote.

\* \* \* \* \*

**Date: January 12, 2012**

**Dale L. Aultman,  
Secretary,  
Farm Credit Administration Board.**