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(c) *Communications with parties other than consumers.* The consumer disclosure requirements of E-SIGN and of Federal Reserve Board Regulation B (12 CFR part 202) do not apply to your communications with parties other than consumers. (Federal Reserve Board Regulations M and Z (12 CFR parts 213 and 226) apply to consumers only.) Nonetheless, you must ensure that your communications, including those disclosures required under the Act and the regulations in this part, demonstrate good business practices in the delivery of credit and closely related services and in your obtaining goods and services.

PART 610—REGISTRATION OF MORTGAGE LOAN ORIGINATORS

AUTHORITY: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 1.13, 2.2, 2.4, 2.12, 5.9, 5.17, 7.2, 7.6, 7.8 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2021, 2073, 2075, 2093, 2243, 2252, 2279a–2, 2279b, 2279c–10); and secs. 1501 *et seq.* of Pub. L. 110–289, 122 Stat. 2654.

SOURCE: 78 FR 51048, Aug. 20, 2013, unless otherwise noted.

§ 610.101 Cross reference.

The rules formerly at 12 CFR part 610 have been recodified by the Consumer Financial Protection Bureau at 12 CFR part 1007, ''S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators (Regulation G)''.

PART 611—ORGANIZATION

Subpart A—General

Sec.
611.100 Definitions.
611.110 Meetings of stockholders.

Subpart B—Bank and Association Board of Directors

611.210 Director qualifications and training.
611.220 Outside directors.

Subpart C—Election of Directors and Other Voting Procedures

611.310 Eligibility for membership on bank and association boards and subsequent employment.
611.320 Impartiality in the election of directors.
611.325 Bank and association nominating committees.
611.326 Floor nominations for open Farm Credit bank and association director positions.
611.330 Disclosures of Farm Credit bank and association director-nominees.
611.340 Confidentiality and security in voting.
611.350 Application of cooperative principles to the election of directors.
611.360 [Reserved]

Subpart D—Compensation Practices of Farm Credit Banks and Associations

611.400 Compensation of bank board members.
611.410 [Reserved]

Subpart E—Transfer of Authorities

611.500 General.
611.501 Procedures.
611.505 Farm Credit Administration review.
611.510 Approval procedures.
611.515 Information statement.
611.520 Plan of transfer.
611.525 Stockholder reconsideration.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

611.1000 General authority.
611.1010 Farm Credit bank charter amendment procedures.
611.1020 Requirements for mergers or consolidations of Farm Credit banks.
611.1030 [Reserved]
611.1040 Creation of new associations.

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

611.1120 General authority.
611.1121 Association charter amendment procedures.
611.1122 Requirements for association mergers or consolidations.
611.1123 Association merger or consolidation agreements.
611.1124 Territorial adjustments.
611.1125 Treatment of associations not approving districtwide mergers.
611.1126 Reconsiderations of mergers and consolidations.

Subpart H—Rules for Inter-System Fund Transfers

611.1130 Inter-System transfer of funds and equities.

Subpart I—Service Corporations

611.1135 Incorporation of service corporations.

611.1136 Regulation and examination of service corporations.
611.1137 Title VIII service corporations.

Subpart J—Unincorporated Business Entities

611.1150 Purpose and scope.
611.1151 Definitions.
611.1152 Authority over equity investments in UBEs for business activity.
611.1153 General restrictions and prohibitions on the use of UBEs.
611.1154 Notice of equity investments in UBEs.
611.1155 Approval of equity investments in UBEs.
611.1156 Ongoing requirements.
611.1157 Disclosure and reporting requirements.
611.1158 Grandfather provision.

Subparts K–O [Reserved]

Subpart P—Termination of System Institution Status

611.1200 Applicability of this subpart.
611.1205 Definitions that apply in this subpart.
611.1210 Advance notices—commencement resolution and notice to equity holders.
611.1211 Special requirements.
611.1215 Communications with the public and equity holders.
611.1216 Public availability of documents related to the termination.
611.1217 Plain language requirements.
611.1218 Role of directors.
611.1219 Prohibited acts.
611.1220 Termination resolution.
611.1221 Submission to FCA of plan of termination and disclosure information; other required submissions.
611.1223 Plan of termination—contents.
611.1230 FCA review and approval—plan of termination.
611.1235 Plan of termination—distribution.
611.1240 Voting record date and stockholder approval.
611.1245 Stockholder reconsideration.
611.1246 Filing of termination application and its contents.
611.1247 FCA review and approval—termination.
611.1250 Preliminary exit fee estimate.
611.1255 Exit fee calculation.
611.1260 Payment of debts and assessments—terminating association.
611.1265 Retirement of a terminating association's investment in its affiliated bank.
611.1270 Repayment of obligations—terminating bank.
611.1275 Retirement of equities held by other System institutions.
611.1280 Dissenting stockholders' rights.
611.1285 Loan refinancing by borrowers.
611.1290 Continuation of borrower rights.

AUTHORITY: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

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

Subpart A—General

SOURCE: 75 FR 18740, Apr. 12, 2010, unless otherwise noted.

§ 611.100 Definitions.

The following definitions apply for the purpose of this part:

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

(b) *FCA* means the Farm Credit Administration.

(c) *Mail ballot* means a ballot cast by regular or electronic mail.

(d) *Online meeting* means a meeting that is conducted over the Internet through the use of mediating technologies, such as online services, computer hardware and software, etc., where technology is used to generate objects and environments that are presented to users through a number of senses (e.g., vision and hearing). The mediating technologies allow people or objects at remote locations to appear locally present or at least allow them to be treated that way during the course of the meeting.

(e) *Online meeting space* means an online environment where Farm Credit institutions can hold stockholder meetings that allow stockholders to communicate, collaborate, and share information. Any stockholder with the necessary technology requirements and access (e.g., password-protected meetings) must be allowed to connect to his or her institution's online meeting space.

(f) *Regional election* means the apportionment of a Farm Credit institution's territory into regions in which a director or directors from a region are elected only by those voting stockholders who reside or conduct agricultural or aquatic operations in that same region.

(g) *Stockholder-association* means an association within a Farm Credit bank district holding voting stock in that bank.

(h) *Stockholder-elected director* means a director who is elected by the majority vote of the voting stockholders voting to serve as a member of a Farm Credit institution's board of directors.

(i) *Voting record date* or *record date* means the official date set by a Farm Credit institution whereby a stockholder must own voting stock in that institution in order to cast a vote.

(j) *Voting record date list* or *record date list* means the list of names, addresses, and classes of stock held by stockholders in the Farm Credit institution who are eligible to vote as of a specific voting record date.

[75 FR 18740, Apr. 12, 2010, as amended at 77 FR 60595, Oct. 3, 2012; 79 FR 17856, Mar. 31, 2014; 80 FR 51116, Aug. 24, 2015]

§611.110 Meetings of stockholders.

(a) *Requirement*. Associations must have annual meetings of stockholders for the purpose of conducting annual director elections. Farm Credit banks are encouraged to hold annual or periodic meetings of stockholders. The bylaws of each Farm Credit bank and association must specify the quorum requirements for stockholder meetings. Associations must elect at least one director at each annual meeting, but the vote on the election of a director or directors by mail ballot may only occur in the period following an annual meeting. An online meeting space may be used in addition to a physical meeting space to conduct a stockholders' meeting or director election. A physical meeting space must always exist for association meetings involving director elections and other stockholders' votes.

(b) *Notice*. Each association, and those Farm Credit banks holding annual meetings, must issue an Annual Meeting Information Statement in accordance with the requirements of §§620.20 and 620.21 of this chapter.

(c) *Online meeting*. Each Farm Credit bank and association using an online meeting space as part of a meeting or election must have policies and procedures in place addressing how the online meeting space will be accessed and used by participants. The policies and procedures must specifically identify any technological adaptations necessary to address the confidentiality and security in voting requirements of §611.340.

Subpart B—Bank and Association Board of Directors

SOURCE: 71 FR 5761, Feb. 2, 2006, unless otherwise noted.

§611.210 Director qualifications and training.

(a) *Qualifications*. (1) Each bank and association board of directors must establish and maintain a policy identifying desirable director qualifications. The policy must explain the type and level of knowledge and experience desired for board members, explaining how the desired qualifications were identified. The policy must be periodically updated and provided to the institution's nominating committee.

(2) Each Farm Credit institution board must have a director who is a financial expert. Boards of directors for associations with $500 million or less in total assets as of January 1 of each year may satisfy this requirement by retaining an advisor who is a financial expert. The financial advisor must report to the board of directors and be free of any affiliation with the external auditor or institution management. A financial expert is one recognized as having education or experience in: Accounting, internal accounting controls, or preparing or reviewing financial statements for financial institutions or large corporations consistent with the breadth and complexity of accounting and financial reporting issues that can reasonably be expected to be raised by the institution's financial statements.

(b) *Training*. Each bank and association board of directors must establish and maintain a policy for director

training that includes appropriate implementing procedures. The policy must identify training areas supporting desired director qualifications. Each Farm Credit bank and association must require newly elected or appointed directors to complete director orientation training within 1 year of assuming their position and require incumbent directors to attend training periodically to advance their skills.

§ 611.220 Outside directors.

(a) *Eligibility, number and term*—(1) *Eligibility*. No candidate for an outside director position may be a director, officer, employee, agent, or stockholder of an institution in the Farm Credit System. Farm Credit banks and associations must make a reasonable effort to select outside directors possessing some or all of the desired director qualifications identified pursuant to § 611.210(a) of this part.

(2) *Number*. Stockholder-elected directors must constitute at least 60 percent of the members of each institution's board.

(i) Each Farm Credit bank must have at least two outside directors.

(ii) Associations with total assets exceeding $500 million as of January 1 of each year must have no fewer than two outside directors on the board. However, this requirement does not apply if it causes the percent of stockholder-elected directors to be less than 75 percent of the board.

(iii) Associations with $500 million or less in total assets as of January 1 of each year must have at least one outside director.

(3) *Terms of office*. Banks and associations may not establish a different term of office for outside directors than that established for stockholder-elected directors.

(b) *Removal*. Each institution must establish and maintain procedures for removal of outside directors. When the removal of an outside director is sought before the expiration of the outside director's term, the reason for removal must be documented. An institution's director removal procedures must allow for removal of an outside director by a majority vote of all voting stockholders voting, in person or by proxy, or by a two-thirds majority vote of the full board of directors. The outside director subject to the removal action is prohibited from voting in his or her own removal action.

Subpart C—Election of Directors and Other Voting Procedures

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

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

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

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

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

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

(e) No person shall be eligible for membership on a Farm Credit bank or association board of directors in the same election cycle for which the Farm Credit institution's nominating committee is identifying candidates if that person was elected to serve on that institution's nominating committee and attended any meeting called by the nominating committee.

(f) Out-of-territory borrowers who hold voting stock in the association may serve as association directors unless prohibited by the association's bylaws. If an association's bylaws prohibit it, that association must inform, in writing and at the time of

loanmaking, each out-of-territory borrower that out-of-territory borrowers may not serve as directors.

[53 FR 50392, Dec. 15, 1988, as amended at 54 FR 37095, Sept. 7, 1989; 75 FR 18740, Apr. 12, 2010]

§611.320 Impartiality in the election of directors.

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

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

(c) No property, facilities, or resources, including information technology and human or financial resources, of any Farm Credit institution shall be used by any candidate for nomination or election or by any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates, including floor nominees. For the limited purpose of Farm Credit bank board elections, each Farm Credit bank may allow its stockholder-associations to use stockholder-association property, facilities, or resources in support of bank director candidates. Any Farm Credit bank permitting this activity by its stockholder-associations must have a policy in place approved by its board of directors establishing reasonable standards that stockholder-associations must follow, and those standards must give appropriate consideration to the various sizes of stockholder-associations within a bank's district and include a maximum amount that a stockholder-association may expend in support of a bank director candidate.

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

(e) No Farm Credit institution may in any way distribute or mail, whether at the expense of the institution or another, any campaign materials for director candidates. Institutions may request biographical information, as well as the disclosure information required under §611.330, from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

(f) No director of a Farm Credit institution shall, in his or her capacity as a director, make any statement, either orally or in writing, which may be construed as intending to influence any vote in that institution's director nominations or elections. This paragraph shall not prohibit director candidates from engaging in campaign activities on their own behalf.

[53 FR 50392, Dec. 15, 1988, as amended at 71 FR 5761, Feb. 2, 2006; 75 FR 18740, Apr. 12, 2010]

§611.325 Bank and association nominating committees.

Each Farm Credit bank and association may have only one nominating committee in any one election cycle. Each Farm Credit bank and association's board of directors must establish and maintain policies and procedures on its nominating committee, describing the formation, composition, operation, resources, and duties of the committee, consistent with current laws and regulations. Each nominating committee must conduct itself in the impartial manner prescribed by the policies and procedures adopted by its institution under §611.320 and this section.

(a) *Composition.* The voting stockholders of each bank and association

must elect a nominating committee of no fewer than three members. Unless prohibited by association bylaws, out-of-territory borrowers who hold voting stock may serve as members of an association's nominating committee. If an association's bylaws prohibit it, that association must inform, in writing and at the time of loanmaking, each out-of-territory borrower that out-of-territory borrowers may not serve on the association's nominating committee.

(b) *Election*. Farm Credit banks and associations may use in-person (including use of an online medium and proxy ballots) or mail balloting procedures to elect a nominating committee.

(1) Farm Credit banks and associations must provide voting stockholders the opportunity to vote on the candidates for each nominating committee position.

(2) Association nominating committee members may only be elected to a 1-year term. Farm Credit Banks must use weighted voting, with no cumulative voting permitted, when electing members to serve on a nominating committee. Farm Credit banks and associations may permit nominating committee members to be re-nominated and stand for re-election to serve successive terms.

(c) *Conflicts of interest*. No individual may serve on a nominating committee who, at the time of election to, or during service on, a nominating committee, is an employee, director, or agent of that bank or association. A nominating committee member may not be a candidate for election to the board in the same election for which the committee is identifying nominees. A nominating committee member may resign from the committee to run for election to the board only if the individual did not attend any nominating committee meeting.

(d) *Responsibilities*. It is the responsibility of each nominating committee to identify, evaluate, and nominate candidates for stockholder election to a Farm Credit bank or association board of directors. A nominating committee's responsibilities are limited to the following:

(1) Nominate individuals who the committee determines meet the eligibility requirements to run for open director positions. The committee must endeavor to ensure representation from all areas of the Farm Credit bank's or association's territory and, as nearly as possible, all types of agriculture practiced within the territory.

(2) Evaluate the qualifications of the director candidates. The evaluation process must consider whether there are any known obstacles preventing a candidate from performing the duties of the position.

(3) Nominate at least two candidates for each director position being voted on by stockholders. If two nominees cannot be identified, the nominating committee must provide written explanation to the existing board of the efforts to locate candidates or the reasons for disqualifying any other candidate that resulted in fewer than two nominees.

(4) Maintain records of its meetings, including a record of attendance at meetings.

(5) Identify, evaluate, and nominate eligible individuals for service on the next nominating committee, if permitted by the institution.

(e) *Resources*. Each Farm Credit bank and association must provide its nominating committee reasonable access to administrative resources in order for the committee to perform its duties. Each Farm Credit bank and association must, at a minimum, provide its nominating committee with FCA regulations and guidance on nominating committees, a current list of stockholders, the most recent bylaws, the current director qualifications policy, and a copy of the policies and procedures that the bank or the association has adopted pursuant to § 611.320(a) ensuring impartial elections. On the request of the nominating committee, the institution must also provide a summary of the current board self-evaluation. The bank or association may require a pledge of confidentiality by committee members prior to releasing evaluation documents.

[75 FR 18741, Apr. 12, 2010]

§611.326 Floor nominations for open Farm Credit bank and association director positions.

(a) Each floor nominee must be eligible for the director position for which the person has been nominated.

(b)(1) Voting stockholders of associations must be allowed to make floor nominations for every open stockholder-elected director position. Associations using only mail ballots must allow nominations from the floor at every session of an annual meeting. Associations permitting stockholders to cast votes during annual meetings may only allow nominations from the floor at the first session of the annual meeting.

(2) If floor nominations are permitted by a Farm Credit bank's election policies and procedures, voting stockholders must be allowed to make floor nominations for every open stockholder-elected director position and a physical meeting space must exist. Before every director election by a Farm Credit bank, the bank must inform voting stockholders whether floor nominations will be accepted.

(c) Each association's board of directors must adopt policies and procedures for making and accepting floor nominations of candidates to stand for election to its board of directors. Each Farm Credit bank's board of directors allowing nominations from the floor must also adopt policies and procedures for making and accepting floor nominations. Policies and procedures for floor nominations must, at a minimum, provide that:

(1) Floor nominations may only be made after the nominating committee has provided its list of director-nominees.

(2) No more than a second by a voting stockholder to a nomination from the floor is required. After receiving a floor nomination, the floor nominee must state if he or she accepts the nomination.

(3) Floor nominees must make the disclosures required by §611.330 of this part.

[75 FR 18741, Apr. 12, 2010]

§611.330 Disclosures of Farm Credit bank and association director-nominees.

(a) Each Farm Credit bank and association's board of directors must adopt policies and procedures that ensure a disclosure statement is prepared by each director-nominee. At a minimum, each disclosure statement for each nominee must:

(1) State the nominee's name, city and state of residence, business address if any, age, and business experience during the last 5 years, including each nominee's principal occupation and employment during the last 5 years.

(2) List all business interests on whose board of directors the nominee serves or is otherwise employed in a position of authority and state the principal business in which the business interest is engaged.

(3) Identify any family relationship of the nominee that would be reportable under part 612 of this chapter if elected to the institution's board.

(b)(1) Floor nominees who are not incumbent directors must provide to the Farm Credit bank or association the information referred to in this section and in §620.6(e) and (f) of this chapter. The information must be provided in either paper or electronic form within the time period prescribed by the institution's bylaws or policies and procedures. If the institution does not have a prescribed time period, each floor nominee must provide this information to the institution within 5 business days of the nomination. If stockholders will not vote solely by mail ballot upon conclusion of the meeting, each floor nominee must provide the information at the first session at which voting is held.

(2) For each nominee who is not an incumbent director or a nominee from the floor, the nominee must provide the information referred to in this section and in §620.6(e) and (f) of this chapter.

(c) Each Farm Credit bank and association must distribute director-nominee disclosure information to all stockholders eligible to vote in the election. Institutions may either restate such information in a standard format or provide complete copies of each nominee's disclosure statement.

(1) Disclosure information for each director-nominee must be provided as part of the Annual Meeting Information Statement (AMIS) issued for director elections in accordance with § 620.21(b) of this chapter.

(2) Disclosure information for each director-nominee must be distributed or mailed with ballots or proxy ballots. Farm Credit banks and associations must ensure that the disclosure information on floor nominees is provided to voting stockholders by delivering ballots for the election of directors in the same format as the comparable information contained in the AMIS.

(d) No person may be a nominee for director who does not make the disclosures required by this section.

[75 FR 18742, Apr. 12, 2010, as amended at 77 FR 60596, Oct. 3, 2012]

§ 611.340 Confidentiality and security in voting.

(a) Each Farm Credit bank and association's board of directors must adopt policies and procedures that:

(1) Ensure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(2) Ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote.

(3) Provide for the establishment of a tellers committee or an independent third party who will be responsible for validating ballots and proxies and tabulating voting results. A tellers committee may only consist of voting stockholders who are not employees, directors, director-nominees, or members of that election cycle's nominating committee.

(4) Ensure that a list of eligible voting stockholders (or identity codes of eligible voting stockholders) as of the voting record date is provided to the tellers committee or independent third party that will be tabulating the vote to ensure the validity of the votes cast. A small number of specifically authorized administrative employees of the institution may assist the tellers committee in such verifications, provided the institution implements procedures to ensure the confidentiality and security of the information made available to the employees. If an institution is using a tellers committee, verification of voter eligibility must be done separate and apart from the opening and tabulating of the actual ballots and may be done in advance of the vote tabulation, any time after the list of eligible voting stockholders has been provided to the tellers committee.

(5) Ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors, stockholders, or employees, or any other person except:

(i) A duly appointed tellers committee;

(ii) A small number of specifically authorized administrative employees assisting the tellers committee by validating stockholders' eligibility to vote;

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

(iv) The Farm Credit Administration.

(b) No Farm Credit bank or association may use signed ballots in stockholder votes. A bank or association may use balloting procedures, such as an identity code, that can be used to identify whether an individual stockholder is eligible to vote or has previously submitted a vote. In weighted voting, the votes must be tabulated by an independent third party.

(c) An independent third party or each member of the tellers committee that tabulates the votes, and any administrative employees assisting the tellers committee in verifying stockholder eligibility to vote, must sign a certificate declaring that such party, member, or employee will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration, if requested.

(d) Once a Farm Credit bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting. A Farm Credit bank or association may give a stockholder voting by proxy an opportunity to give

voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

(e) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. When stockholder meetings are held for the purpose of conducting elections or other votes, only proxy ballots may be accepted prior to any or all sessions of the stockholders' meeting and mail ballots may only be distributed after the conclusion of the meeting. In an election of directors, ballots, proxy ballots, and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(f) An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or independent third party has validated the results of the vote.

[80 FR 30335, May 28, 2015]

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

In the election of directors, each Farm Credit institution shall comply with the following cooperative principles as well as those set forth in § 615.5230 of this chapter, unless otherwise required by statute or regulation.

(a) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding. Each voting stockholder-association of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders. Each voting stockholder of an agricultural credit bank has only one vote, unless another voting scheme has been approved by the Farm Credit Administration.

(b) If an association apportions its territory into geographic regions for director nomination or election purposes, out-of-territory voting stockholders must be assigned to a geographic region.

(c) All voting stockholders of a Farm Credit institution have the right to vote in any stockholder vote to remove any director.

[75 FR 18742, Apr. 12, 2010]

§ 611.360 [Reserved]

Subpart D—Compensation Practices of Farm Credit Banks and Associations

§ 611.400 Compensation of bank board members.

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

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

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

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

(i) The exceptional circumstances justifying the additional director compensation, including the extraordinary

time and effort the director devoted to bank business; and

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

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

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

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

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

(e) Directors may also be reimbursed for reasonable travel, subsistence, and other related expenses in accordance with the bank's policy.

[59 FR 37411, July 22, 1994, as amended at 64 FR 16618, Apr. 6, 1999; 65 FR 8023, Feb. 17, 2000; 77 FR 60596, Oct. 3, 2012]

§ 611.410 [Reserved]

Subpart E—Transfer of Authorities

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

§ 611.500 General.

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

§ 611.501 Procedures.

(a) The boards of directors of a bank and an association which seek to transfer authorities may adopt appropriate resolutions approving such transfer and providing for the submission of such a proposal to their respective stockholders for a vote.

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

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

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

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

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

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

§ 611.505 Farm Credit Administration review.

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

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

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

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

(e) The effective date of a transfer may not be less than 35 days after

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

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

§611.510 Approval procedures.

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

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

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

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

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

(3) The Farm Credit Administration.

§611.515 Information statement.

(a) The bank and association shall prepare an information statement which will inform stockholders about the provisions of the proposed transfer of authorities and the effect of the proposal on the bank and the association.

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

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

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

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

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

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

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

(6) A presentation of the following financial data:

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

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

(A) Such financial statements shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the

institution, and operating results since the end of the last fiscal year through the end of the most recent quarter of the institution.

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

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

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

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

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

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

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

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

(10) A presentation of the association's interest rate and fee programs, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

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

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

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

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

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

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

§ 611.520 Plan of transfer.

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

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

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

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

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

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

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

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

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

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

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

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

§611.525 Stockholder reconsideration.

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

(b) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the transfer. If a majority of stockholders of any institution involved in the transfer votes against the transfer, the transfer is not approved.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

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

§611.1000 General authority.

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

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

(c) The FCA may, on its own initiative, make changes in the charter of a Farm Credit bank, and any chartered service corporation thereof, where the FCA determines that the change is necessary to accomplish the purposes of the Act.

[80 FR 51116, Aug. 24, 2015]

§611.1010 Farm Credit bank charter amendment procedures.

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

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

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

(3) A change to its name or location;

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

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

(c) The FCA will review the material submitted and either approve or disapprove the request. The FCA may require submission of any supplemental information and analysis it deems appropriate. If the request is for merger, consolidation, or transfer of territory,

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

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

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

[80 FR 51116, Aug. 24, 2015]

§ 611.1020 Requirements for mergers or consolidations of Farm Credit banks.

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

(b) The plan to merge or consolidate two or more Farm Credit banks is subject to the requirements of §§ 611.1122, 611.1123, and 611.1126 of this part, unless otherwise instructed by the FCA. In interpreting those sections, the phrase ''Farm Credit bank(s)'' will be read for the word ''association(s)'' and references to ''funding bank'' are to be ignored.

[80 FR 51116, Aug. 24, 2015]

§ 611.1030 [Reserved]

§ 611.1040 Creation of new associations.

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

[53 FR 50393, Dec. 15, 1988, as amended at 80 FR 51116, Aug. 24, 2015]

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

§ 611.1120 General authority.

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

(b) The FCA may make changes in the charter of an association as may be requested by that association and approved by the FCA pursuant to § 611.1121 of this part.

(c) The FCA may, on its own initiative, make changes in the charter of an agricultural credit association, Federal land bank association, or a production credit association, and any chartered service corporation thereof, where the FCA determines that the change is necessary to accomplish the purposes of the Act.

[50 FR 20400, May 16, 1985, as amended at 51 FR 41945, Nov. 20, 1986; 80 FR 51116, Aug. 24, 2015]

§ 611.1121 Association charter amendment procedures.

(a) An association that proposes to amend its charter must submit a request to its funding bank containing the following information:

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

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

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

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

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

(c) Upon receipt of an association's request for a charter amendment, the FCA will review the materials submitted and either approve or disapprove the request. The FCA may require submission of any supplemental information and analysis it deems appropriate.

(d) The FCA will notify the association of its approval or disapproval of the amendment request, including a copy of the amended charter with the approval notification, and provide a copy of such communication to the funding bank.

[80 FR 51116, Aug. 24, 2015]

§611.1122 Requirements for association mergers or consolidations.

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

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

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

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

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

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

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

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

(7) Any additional information or documents each association wishes to submit in support of the request; and

(8) All additional information and documentation that the funding bank or the FCA requests.

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

(c) Upon receipt of a complete association merger or consolidation request, the FCA will review the request and either deny or give its written preliminary approval to the request within 60 days. The FCA will notify the requesting associations when the 60-day preliminary approval review period begins. The FCA may require submission of any supplemental information and analysis it deems appropriate for its consideration of the merger or consolidation request.

(1) When a request is denied, written notice stating the reasons for the denial will be transmitted to the associations and a copy provided to the funding bank(s).

(2) When a request is preliminarily approved, written notice of the preliminary approval will be given to the associations and a copy provided to the funding bank(s). Preliminary approval

by the FCA does not constitute approval of the merger or consolidation. Approval of a merger or consolidation is only issued pursuant to this subpart. In connection with granting preliminary approval, the FCA may impose conditions in writing.

(d) Upon receipt of preliminary approval by the FCA of a merger or consolidation request, each constituent association must call a meeting of its voting stockholders. The FCA may also require, when considered appropriate to the merger or consolidation request under review, the associations to hold informational meetings before a stockholder vote. The stockholder meeting to vote on a merger or consolidation must:

(1) Be called on written notice to each stockholder entitled to vote on the transaction as of the record date and be held in accordance with the terms of each association's bylaws.

(2) Follow the voting procedures of § 611.340, except associations may not use tellers committees to validate ballots and tabulate votes on the merger or consolidation.

(3) Require the affirmative vote of a majority of the voting stockholders of each association present and voting, either in person or by written proxy, at a meeting at which a quorum is present to constitute stockholder approval of a merger or consolidation proposal.

(e) Notice of the stockholder meeting to consider and act upon a proposed merger or consolidation must be accompanied by the information required under this paragraph. The notice and accompanying information must not be sent to stockholders until preliminary approval of the merger or consolidation has been given by the FCA.

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

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

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

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

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

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

(6) A presentation of the following financial data:

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

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

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

statement format must be that contained in the association's annual report to stockholders; must contain any significant changes in accounting policies that differ from those in the latest association annual report to stockholders; and must contain appropriate footnote disclosures, including data relating to high-risk assets and other property owned, and allowance for loan losses, including net chargeoffs as required in paragraph (e)(10) of this section.

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

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

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

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the association in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted thereon.

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

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

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

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

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

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

(15) A statement on the proposed institution's relationship with an independent public accountant, including any change that may occur as a result of the merger or consolidation.

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

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

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

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

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

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

(f) Where a proposed merger or consolidation will involve more than three associations, the FCA may require the supplementation, or allow the condensation or omission of any information required under paragraph (e) of this section in furtherance of meaningful disclosure to stockholders. Any waiver sought under this paragraph must be obtained before preparation of the financial statements and accompanying schedules required under paragraph (e) of this section.

(g) The effective date of a merger or consolidation may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the FCA of all required documents for the FCA's consideration of final approval, whichever occurs later.

(1) The constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

(2) If no reconsideration petition is filed with the FCA, upon final approval by the FCA, the merger or consolidation will be effective on the date specified in the merger agreement or at such later date as may be required by the FCA.

(h) Each constituent association must notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, each association must submit to the FCA a certified copy of the stockholders' resolution on which the stockholders cast their votes and a certification of the stockholder vote from the independent third party(s) used to tally the vote. After the time for submitting reconsideration petitions has expired, and if no petition is filed, the FCA will make a final approval decision on the merger or consolidation, imposing conditions as appropriate. The FCA will send written notice of the final FCA approval decision to the associations and provide a copy to the affiliated funding bank(s).

(i) No Farm Credit institution, or any director, officer, employee, agent, or other person participating in the conduct of the affairs thereof, may make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary

under the circumstances to make statements made not misleading, to a stockholder of any association in connection with an association merger or consolidation.

(1) No Farm Credit institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of a Farm Credit institution may make an oral or written representation to any person that a preliminary or final approval by the FCA of a merger or consolidation constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(2) When a Farm Credit institution, or any of its employees, officers, directors, agents, or other person participating in the conduct of the affairs thereof, make disclosures or representations in connection with an association merger or consolidation that, in the judgment of the FCA, are incomplete, inaccurate, or misleading, whether or not such disclosure or representation is made in disclosure statements required by this subpart, such institution must make such additional or corrective disclosure as directed by the FCA and as is necessary to provide stockholders and the general public with full and fair disclosure.

[80 FR 51117, Aug. 24, 2015]

§611.1123 Association merger or consolidation agreements.

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

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

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

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

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

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

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

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

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

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

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

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

(8) A description of the legal opinions or rulings (including those related to tax matters), if any, that have been obtained or furnished by any party in connection with the proposed transaction. Also, refer to paragraph (a)(5) of this section.

(9) The capitalization plan and capital structure for the continuing or consolidated association and a statement that the capitalization plan must comply with applicable FCA regulations.

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

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

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

[50 FR 20400, May 16, 1985, as amended at 51 FR 32442, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988; 80 FR 51119, Aug. 24, 2015]

§ 611.1124 Territorial adjustments.

This section applies to any request submitted to the FCA to modify association charters for the purpose of transferring territory from one association to another.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Upon receipt of an association's request to transfer territory, the FCA will review the request and either deny or grant preliminary approval to the request. The FCA may require submission of any supplemental information and analysis it deems appropriate for its consideration of the request to transfer territory.

(1) When a request is denied, written notice stating the reasons for the denial will be transmitted to the associations, and a copy provided to the funding bank.

(2) When a request is preliminarily approved, written notice of the preliminary approval will be transmitted to the associations, and a copy provided to the funding bank. Preliminary approval by the FCA does not constitute approval of the territory transfer. Final approval is granted only in accordance with paragraph (h) of this section. In connection with granting preliminary approval, the FCA may impose conditions in writing.

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

(f) Notice of the meeting to consider and act upon a proposed territory transfer must be accompanied by the following information covering each constituent association:

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

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

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

(3) The reason the territory transfer is proposed;

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

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

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

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

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

(g) No Farm Credit institution, or director, officer, employee, agent, or other person participating in the conduct of the affairs thereof, may make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any

Farm Credit institution in connection with a territory transfer.

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

(i) No director, officer, employee, agent, or other person participating in the conduct of the affairs of a Farm Credit institution may make an oral or written representation to any person that a preliminary or final approval by the FCA of a territory transfer constitutes, directly or indirectly, a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(j) When a Farm Credit institution, or any of its employees, officers, directors, agents, or other persons participating in the conduct of the affairs thereof, make disclosures or representations that, in the judgment of the FCA, are incomplete, inaccurate, or misleading in connection with a territory transfer, whether or not such disclosure or representation is made in disclosure statements required by this subpart, such institution must make such additional or corrective disclosure as directed by the FCA and as is necessary to provide stockholders and the general public with full and fair disclosure.

(k) The notice and accompanying information required under paragraph (f) of this section may not be sent to stockholders until preliminary approval of the territory transfer has been granted by the FCA.

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

(m) Each borrower whose real estate or operations is located in a territory that will be transferred must be provided with a written Notice of Territory Transfer immediately after the FCA has granted final approval of the territory transfer. The Notice must inform the borrower of the transfer of the borrower's loan to the transferee association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities must be offered that will not adversely affect the interest of the owner. The Notice must give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit must be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with § 614.4070.

(n) This section does not apply to territory transfers initiated by order of the FCA or to territory transfers due to the liquidation of the transferor association.

(o) Where a proposed action involves the transfer of a portion of an association's territory to an association operating in a different district, such proposal must comply with the provisions of this section and section 5.17(a) of the Act.

[80 FR 51119, Aug. 24, 2015]

§ 611.1125 Treatment of associations not approving districtwide mergers.

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

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

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

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

(3) Discriminate in the provision of any professional assistance that may be normally provided by the funding bank to associations; or

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

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

[51 FR 32443, Sept. 12, 1986, as amended at 60 FR 34099, June 30, 1995; 80 FR 51121, Aug. 24, 2015]

§611.1126 Reconsiderations of mergers and consolidations.

(a) Voting stockholders have the right to reconsider their approval of a merger or consolidation, provided that a petition is filed with the FCA. The petition must be signed by 15 percent of the stockholders (who were eligible to vote on the merger or consolidation proposal) of one or more of the constituent associations. The reconsideration petition must be filed with the FCA within 35 days after the date when the association mailed the notification of the final results of the stockholder vote pursuant to §611.1122(h).

(b) Voting stockholders that intend to file a reconsideration petition have a right to obtain from the association of which they are a voting stockholder the voting record date list used by that association for the merger or consolidation vote. The association must provide the voting record date list as soon as possible, but not later than 7 days after receipt of the request. The list must be provided pursuant to the provisions of §618.8310(b) of this chapter.

(c) A reconsideration petition must be addressed to the Secretary of the FCA Board and filed with the FCA on or before the deadline described in paragraph (a) of this section. Reconsideration petitions must identify a contact person and provide contact information for that person.

(1) Filing of a reconsideration petition may only be accomplished through in-person delivery during normal business hours to any FCA employee in official duty status or by sending the petition by mail, facsimile, electronic transmission, carrier delivery, or other similar means to an FCA office.

(2) The FCA will use the postmark, ship date, electronic stamp, or similar evidence as the date of filing the reconsideration petition.

(d) The FCA will notify the named contact on the reconsideration petition whether the petition was filed on time. On the timely receipt of a reconsideration petition, the FCA will review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition was timely filed and complies with applicable requirements, the FCA will give notice to the associations involved in the merger or consolidation for which the reconsideration petition was filed. The associations are not entitled to either a copy of the petition or the names of the petitioners.

(e) Following FCA notification that a reconsideration petition has been properly filed, a special stockholders meeting must be called by the association(s) to reconsider the merger or consolidation vote. The reconsideration vote must be conducted according to the merger and consolidation voting requirements of §611.1122(d). If a majority of the stockholders voting, in person or by proxy, at a duly authorized stockholders' meeting from any one of the constituent associations vote against the merger or consolidation under the reconsideration vote, the merger or consolidation will not take place. In the event that the merger or consolidation is approved on reconsideration,

the constituent associations must use the second effective date developed under § 611.1122(g)(1).

[80 FR 51121, Aug. 24, 2015]

Subpart H—Rules for Inter-System Fund Transfers

§ 611.1130 Inter-System transfer of funds and equities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

are stockholders to accomplish the necessary assessments through debits and credits to the accounts of the bank.

[50 FR 36986, Sept. 11, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986, as amended at 51 FR 41945, Nov. 20, 1986; 58 FR 48790, Sept. 20, 1993; 59 FR 21643, Apr. 26, 1994; 78 FR 31831, May 28, 2013]

Subpart I—Service Corporations

SOURCE: 66 FR 16843, Mar. 28, 2001, unless otherwise noted.

§611.1135 Incorporation of service corporations.

(a) *What is the process for chartering a service corporation?* A Farm Credit bank or association (you or your) may organize a corporation acting alone or with other Farm Credit banks or associations to perform, for you or on your behalf, any function or service that you are authorized to perform under the Act and Farm Credit Administration (we, us, or our) regulations, with two exceptions. Those exceptions are that your corporation may not extend credit or provide insurance services. To organize a service corporation, you must submit an application to us following the applicable requirements of paragraph (c) of this section. If what you propose in your application meets the requirements of the Act, our regulations, and any other conditions we may impose, we may issue a charter for your service corporation making it a federally chartered instrumentality of the United States. Your service corporation will be subject to examination, supervision, and regulation by us.

(b) *Who may own equities in your service corporation?* (1) Your service corporation may only issue voting and non-voting stock to:

(i) One or more Farm Credit banks and associations; and

(ii) Persons that are not Farm Credit banks or associations, provided that at least 80 percent of the voting stock is at all times held by Farm Credit banks or associations.

(2) For the purposes of this subpart, we define persons as individuals or legal entities organized under the laws of the United States or any state or territory thereof.

(c) *What must be included in your application to form a service corporation?* Your application for a corporate charter must include:

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

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

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

(i) The name of your corporation;

(ii) The city and state where the principal offices of your corporation are to be located;

(iii) The general purposes for the formation of your corporation;

(iv) The general powers of your corporation;

(v) The procedures for a Farm Credit bank or association or persons that are not Farm Credit institutions to become a stockholder;

(vi) The procedures to adopt and amend your corporation's bylaws;

(vii) The title, par value, voting and other rights, and authorized amount of each class of stock that your corporation will issue and the procedures to retire each class;

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

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

(x) The standards and procedures for the application and distribution of your corporation's earnings; and

(xi) The length of time your corporation will exist.

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

(5) A statement of the proposed amounts and sources of capitalization and operating funds;

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

(7) Any other supporting documentation that we may request.

(d) *What will we do with your application?* If we approve your completed application, we will issue a charter for your service corporation as a corporate body and a federally chartered instrumentality. We may condition the issuance of a charter, including imposing minimum capital requirements, as we deem appropriate. For good cause, we may deny your application.

(e) *Once your service corporation is formed, how are its articles of incorporation amended?* Your service corporation's articles of incorporation may be amended in either of two ways:

(1) The board of directors of the corporation may request that we amend the articles of incorporation by sending us a certified resolution of the board of directors of the service corporation that states the:

(i) Section(s) to be amended;

(ii) Reason(s) for the amendment;

(iii) Language of the articles of incorporation provision, as amended; and

(iv) Requisite shareholder approval has been obtained. The request will be subject to our approval as stated in paragraphs (a) and (c) of this section.

(2) We may at any time make any changes in the articles of incorporation of your service corporation that are necessary and appropriate for the accomplishment of the purposes of the Act.

(f) *When your service corporation issues equities, what are the disclosure requirements?* Your service corporation must provide the disclosures described in § 615.5255 of this chapter.

[66 FR 16843, Mar. 28, 2001, as amended at 70 FR 53907, Sept. 13, 2005; 71 FR 65386, Nov. 8, 2006]

§ 611.1136 Regulation and examination of service corporations.

(a) *What regulations apply to a service corporation?* Because a service corporation is formed by banks and associations, it is subject to applicable Farm Credit Administration (we, our) regulations.

(b) *Who examines a service corporation?* We examine service corporations.

(c) *What types of service corporations are subject to our regulations and examination?* All incorporated service corporations formed by banks and associations are subject to our regulations and examination.

[66 FR 16843, Mar. 28, 2001, as amended at 78 FR 31831, May 28, 2013]

§ 611.1137 Title VIII service corporations.

(a) *What is a title VIII service corporation?* A title VIII service corporation is a service corporation organized for the purpose of exercising the authorities granted under title VIII of the Act to act as an agricultural mortgage marketing facility.

(b) *How do I form a title VIII service corporation?* A title VIII service corporation is formed and subject to the same requirements as a service corporation formed under § 611.1135, with one exception. The Federal Agricultural Mortgage Corporation or its affiliates may not form or own stock in a title VIII service corporation.

Subpart J—Unincorporated Business Entities

SOURCE: 78 FR 31831, May 28, 2013, unless otherwise noted.

§ 611.1150 Purpose and scope.

(a) *Purpose.* This subpart sets forth the parameters for one or more Farm Credit System (System) institutions to organize or invest in an Unincorporated Business Entity (UBE) in accordance with the Farm Credit Act of 1971, as amended (Act).

(b) *Scope.* Except as authorized under these regulations, no System institution may manage, control, become a member or partner, or invest in a State-organized or chartered business entity. This subpart applies to each System institution that organizes or invests in a UBE, including a UBE organized for the express purpose of investing in a Rural Business Investment Company. This subpart does not apply to UBEs that one or more System institutions have the authority to establish as Rural Business Investment Companies pursuant to the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended (FSRIA) and United States

Department of Agriculture regulations implementing FSRIA.

§611.1151 Definitions.

For purposes of this subpart, the following definitions apply:

Articles of formation means registration certificates, charters, articles of organization, partnership agreements, membership or trust agreements, operating, administration or management agreements, fee agreements or any other documentation on the establishment, ownership, or operation of a UBE.

Control means that one System institution, directly or indirectly, owns more than 50 percent of the UBE's equity *or* serves as the general partner of an LLLP, or constitutes the sole manager or the managing member of a UBE. However, under generally accepted accounting principles (GAAP), the power to control may also exist with a lesser percentage of ownership, for example, if a System institution is the UBE's primary beneficiary, exercises significant influence over the UBE or establishes control under other facts and circumstances in accordance with GAAP. Under this definition, a System institution also will be deemed to have control over the UBE if it exercises decision-making authority in a principal capacity of the UBE as defined under GAAP.

Equity investment means a System institution's contribution of money or assets to the operating capital of a UBE that provides ownership rights in return.

System institution means each System bank under titles I or III of the Act, each System association under title II of the Act, and each service corporation chartered under section 4.25 of the Act.

Third-party UBE means a UBE that is owned or controlled by one or more non-System persons or entities as the term ''control'' is defined under GAAP.

UBE means a Limited Partnership (LP), Limited Liability Partnership (LLP), Limited Liability Limited Partnership (LLLP), Limited Liability Company (LLC), Business or other Trust Entity (TE), or other business entity established and maintained under State law that is not incorporated under any law or chartered under Federal law.

UBE business activity means the services and functions delivered by a UBE for one or more System institutions.

Unusual and complex collateral means acquired property that may expose the owner to risks beyond those commonly associated with loans, including, but not limited to, acquired industrial or manufacturing properties where there is increased risk of incurring potential environmental or other liabilities that may accrue to the owners of such properties.

§611.1152 Authority over equity investments in UBEs for business activity.

(a) *Regulation, supervisory, oversight, examination and enforcement authority.* FCA has regulatory, supervisory, oversight, examination and enforcement authority over each System institution's equity investment in or control of a UBE and the services and functions that a UBE performs for the System institution. This includes FCA's authority to require a System institution's dissolution of, disassociation from, or divestiture of an equity investment in a UBE, or to otherwise condition the approval of equity investments in UBEs.

(b) *Assessing UBE investments and business activity.* In accordance with section 5.15 of the Act, the cost of regulating and examining System institutions' activities involving UBEs will be taken into account when assessing a System institution for the cost of administering the Act.

§611.1153 General restrictions and prohibitions on the use of UBEs.

(a) *Authorized UBE business activity.* All UBE business activity must be:

(1) Necessary or expedient to the business of one or more System institutions owning the UBE; and

(2) In no instance greater than the functions and services that one or more System institutions owning the UBE are authorized to perform under the Act and as determined by the FCA.

(b) *Circumvention of cooperative principles.* System institutions are prohibited from using UBEs to engage in direct lending activities or any other activity that would circumvent the application of cooperative principles, including borrower rights as described in section 4.14A of the Act, or stock ownership, voting rights or patronage as described in section 4.3A of the Act.

(c) *Transparency and the avoidance of conflicts of interest.* Each System institution must ensure that:

(1) The UBE is held out to the public as a separate or subsidiary entity;

(2) The business transactions, accounts, and records of the UBE are not commingled with those of the System institution; and

(3) All transactions between the UBE and System institution directors, officers, employees, and agents are conducted at arm's length, in the interest of the System institution, and in compliance with standards of conduct rules in §§ 612.2130 through 612.2270.

(d) *Limit on one-member UBEs.* A UBE owned solely by a single System institution (including between and among a parent agricultural credit association and its production credit association and Federal land credit association subsidiaries and between a parent agricultural credit bank and its subsidiary Farm Credit Bank) as a one-member UBE is limited to the following special purposes:

(1) Acquiring and managing the unusual or complex collateral associated with loans; and

(2) Providing limited services such as electronic transaction, fixed asset, trustee or other services that are integral to the daily internal operations of a System institution.

(e) *Limit on UBE partnerships.* A System institution operating through a parent-subsidiary structure may not create a UBE partnership between or among the parent agricultural credit association and its production credit association and Federal land credit association subsidiaries or between a parent Agricultural Credit Bank and its Farm Credit Bank subsidiary.

(f) *Prohibition on UBE subsidiaries.* Except as provided in this paragraph, a System institution may not create a subsidiary of a UBE that it has organized or invested in under this subpart or enable the UBE itself to create a subsidiary or any other type of affiliated entity. A System institution may establish a UBE as a subsidiary of a UBE formed pursuant to paragraph (d)(1) of this section to hold each investor's pro-rata interest in acquired property provided that the loan collateral at issue involves a multi-lender transaction that includes System and non-System lenders.

(g) *Limit on potential liability.* (1) Each System institution's equity investment in a UBE must be established in a manner that will limit potential exposure of the System institution to no more than the amount of its investment in the UBE.

(2) A System institution cannot become a general partner of any partnership other than an LLLP.

(h) *Limit on amount of equity investment in UBEs.* The aggregate amount of equity investments that a single System institution is authorized to hold in UBEs must not exceed one percent of the institution's total outstanding loans, calculated at the time of each investment. On a case-by-case basis, FCA may approve an exception to this limitation that would exceed the one-percent aggregate limit. Conversely, FCA may impose a percentage limit lower than the one-percent aggregate limit based on safety or soundness and other relevant concerns. This one-percent aggregate limit does not apply to equity investments in one-member UBEs formed for acquired property as permitted in paragraph (d)(1) of this section. Any equity investment made in a UBE by a service corporation must be attributed to its System institution owners based on the ownership percentage of each bank or association.

(i) *Prohibition on relationship with a third-party UBE.* A System institution is prohibited from:

(1) Making any equity investment in a third-party UBE except as may be authorized on a case-by-case basis under § 615.5140(e) of this chapter for de minimis and passive investments. Such requests would be considered outside of this rule.

(2) Serving as the general partner or manager of a third-party UBE; or

(3) Being designated as the primary beneficiary of a third-party UBE, either alone or with other System institutions.

(j) *Limitation on non-System equity investments*. Non-System persons or entities may not invest in a UBE that is controlled by a System institution except that non-System persons or entities may own 20 percent or less of the equity of a System-controlled UBE organized to deliver services integral to the daily internal operations of a System institution.

(k) *UBEs formed for acquiring and managing collateral*. The provisions of paragraphs (i) and (j) of this section do not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

EFFECTIVE DATE NOTE: At 86 FR 58559, Oct. 22, 2021, §611.1153 was amended in paragraph (c)(3) by removing the phrase ''in compliance with the standards of conduct rules in §§612.2130 through 612.2270'' and adding in its place the phrase ''in compliance with the standards of conduct rules in 12 CFR 612, subpart A of this chapter.'', effective Jan. 1, 2023.

§611.1154 Notice of equity investments in UBEs.

(a) *Applicability*. This notice provision is applicable only to System institutions that wish to make an equity investment in UBEs whose activities are limited to the following purposes:

(1) Acquiring and managing unusual or complex collateral associated with loans;

(2) Providing hail or multi-peril crop insurance services in collaboration with another System institution in accordance with §618.8040 of this chapter; and

(3) Any other UBE business activity that FCA determines to be appropriate for this notice provision.

(b) *Notice requirements*. System institutions must provide written notice to FCA so that the notice is received by FCA no later than 10 business days in advance of making an equity investment in a UBE for authorized UBE business activity described in paragraph (a) of this section. The notice must include:

(1) The UBE's articles of formation, including its name and the State in which it is organized, length of time it will exist, its partners or members, and its management structure;

(2) The dollar amount of the System institution's equity investment in the UBE;

(3) A certified resolution of the System institution's board of directors authorizing the equity investment in, and business activity of, the UBE and the board's approval to submit the notice to the FCA. For UBEs organized to acquire and manage unusual or complex collateral associated with loans as identified in paragraph (a)(1) of this section, the board of directors may adopt a blanket board resolution to cover all such UBEs that the System institution will organize.

(4) Except for those UBEs identified in paragraph (a)(1) of this section, a board statement included with the certified board resolution affirming that the UBE:

(i) Is needed to achieve operating efficiencies and benefits;

(ii) Is necessary or expedient to the System institution's business;

(iii) Will operate with transparency;

(iv) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);

(v) Will otherwise be in compliance with applicable Federal, State, and local laws; and

(vi) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or to exceed the stated purpose of the UBE as set forth in its articles of formation.

(5) A letter from the funding bank that it has approved the institution's equity investment in the UBE. For those UBEs organized to acquire and manage unusual or complex collateral associated with loans as identified in paragraph (a)(1) of this section, the funding bank may provide a blanket approval letter to cover all such UBEs that its district associations may invest in or organize.

(6) Any additional information the System institution wishes to submit.

(c) *Supplementation or omission of information*. FCA may require the supplementation or allow the omission of any information required under paragraph (b) of this section.

(d) *Other requirements*. A System institution may not organize or invest in those UBEs identified in paragraph (a) of this section if the FCA notifies the institution before the end of the 10 business day advance notice period that such investment requires FCA approval under the provisions of § 611.1155.

§ 611.1155 Approval of equity investments in UBEs.

(a) *Request*. System institutions must receive FCA approval before organizing or investing in any UBE that does not qualify for the notice provision set forth in § 611.1154(a). A request for approval under this section must include the following information:

(1) A detailed statement of the risk characteristics of the investment, as required by § 615.5140(e) of this chapter and the initial amount of equity investment;

(2) A detailed statement on the purpose and objectives of the UBE; the need for the UBE and the operating efficiencies and benefits that will be achieved by using the UBE;

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

(i) The UBE's name, the State in which it is organized, the city and State in which its principal office is to be located, and its partners or members and management structure;

(ii) Specific business activities that the UBE will conduct;

(iii) General powers of the UBE;

(iv) Ownership, voting, partnership, membership and operating agreements for the UBE;

(v) Procedures to adopt and amend the partnership, membership or operating agreement of the UBE;

(vi) The standards and procedures for the application and distribution of the UBE's earnings; and

(vii) Length of time the UBE will exist.

(4) A certified resolution of the System institution's board of directors authorizing the equity investment in the UBE and the UBE business activity and the board's approval to submit the request to the FCA. The certified board resolution must include a board statement affirming that the UBE:

(i) Is necessary or expedient to the System institution's business;

(ii) Will operate with transparency;

(iii) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);

(iv) Will comply with applicable Federal, State, and local laws; and

(v) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or exceed the purpose of the UBE as stated in its articles of formation.

(5) A letter from the funding bank that it has approved the institution's equity investment in the UBE;

(6) Any additional information the System institution wishes to submit.

(b) *Supplementation or omission of information*. FCA may require the supplementation or allow the omission of any information required under paragraph (a) of this section based on the complex or noncomplex nature of the proposed UBE.

(c) *Denial of a request*. The FCA will specify in writing to the submitting System institutions the reasons for denial of any request to organize or invest in a UBE.

§ 611.1156 Ongoing requirements.

A System institution that organizes or invests in a UBE must also comply with the following requirements:

(a) Maintain and ensure FCA's access to all books, papers, records, agreements, reports and other documents of each UBE necessary to document and protect the institution's interest in each entity;

(b) Divest, as soon as practicable, the institution's equity or beneficial interest in, and sever any relationship with a UBE:

(1) That conducts activities beyond those authorized to carry out its limited purpose or that are contrary to the Act or FCA regulations, or as otherwise directed to do so by FCA; or

(2) Where non-System persons or entities obtain control as defined under GAAP. This paragraph does not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

§611.1157 Disclosure and reporting requirements.

(a) *Annual report to shareholders.* In its annual report to shareholders, as set forth in §620.5(a)(12) of this chapter, a System institution must provide information on its UBE investment and business activity.

(b) *Periodic reports as directed.* As directed by FCA, a System institution must submit periodic reports to FCA on any equity investment in a UBE or UBE status as provided under §621.12 of this chapter, and in accordance with §§621.13 and 621.14 of this chapter.

(c) *Dissolution of a UBE.* A System institution must submit a timely report to FCA on the dissolution of a UBE that it controls.

§611.1158 Grandfather provision.

(a) *Scope.* The following equity investments in UBEs are grandfathered from the Notice and Approval provisions under §§611.1154 and 611.1155, respectively.

(1) Those UBE formations or equity investments that received specific, written approval by FCA prior to the effective date of this regulation; and

(2) Those UBE formations or equity investments that occurred prior to the effective date of this regulation to acquire or manage unusual or complex collateral associated with loans.

(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 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 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.

[71 FR 44420, Aug. 4, 2006, as amended at 85 FR 52253, Aug. 25, 2020]

§ 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 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 require you to engage independent experts, acceptable to us, to conduct assessments, analyses, or studies, or to request rulings, including, but not limited to:

(1) Assessments of fair value;

(2) Analyses and rulings on tax implications; and

(3) Studies of the effect of your proposal on equity holders (including the effect on holders in their capacity as borrowers), the System, and other parties.

(b) *Informational meetings.* After the advance notice, but before the stockholder vote, we may require you to hold regional or local informational meetings in convenient locations, at convenient times, and in a manner conducive to accommodating all equity holders that wish to attend, to discuss equity holder issues and answer questions. These meetings are subject to the plain language requirements of §611.1217(b) regarding balanced statements.

§611.1215 Communications with the public and equity holders.

(a) *Communications after commencement resolution and before termination.* The terminating institution may communicate with equity holders and the public regarding the proposed termination, as long as written communications (other than non-public communications among participants, *i.e.*, persons or entities that are parties to a proposed corporate restructuring involving the successor institution, or their agents) made in connection with or relating to the proposed termination and any related transactions are filed in accordance with paragraph (c) of this section and the conditions in this section are satisfied.

(b) To rely on this section, you must include the following legend in each communication in a prominent location:

Equity holders should read the plan of termination that they have received or will receive (as appropriate) because it contains important information, including an enumerated statement of the anticipated benefits and potential disadvantages of the proposal.

(c) All your written communications and all written communications by your directors, employees, and agents in connection with or relating to the proposed termination or any related transactions must be filed with us under this section on or before the date of first use.

(d) We will require you to correct communications that we deem are misleading or inaccurate.

(e) In addition to the filings we require under paragraph (c) of this section, we may require you to file timely any written communications you have knowledge of that are made by any other participants or their agents in connection with or related to the proposed termination or to any transaction related to the proposed termination.

(f) An immaterial or unintentional failure to file or a delay in filing a written communication described in this section will not result in a violation of this section, as long as:

(1) A good faith and reasonable effort was made to comply with the filing requirement; and

(2) The written communication is filed as soon as practicable after discovery of the failure to file.

(g) Communications that exist in electronic form must be filed electronically with the FCA as we direct. For communications that do not exist in electronic form, you must timely notify us by electronic mail and send us a copy by regular mail.

(h) You do not need to file a written communication that does not contain new or different information from that which you have previously publicly disclosed and filed under this section.

§ 611.1216 Public availability of documents related to the termination.

(a) We may post on our Web site, or require you to post on your Web site:

(1) Results of any special assessments, analyses, studies, and rulings required under § 611.1211;

(2) Documents you submit to us or file with us under § 611.1215; and

(3) Documents you submit to us under section 7.11 of the Act that are related directly or indirectly to the proposed termination, including but not limited to contracts entered into in connection with or relating to the proposed termination and any related transactions.

(b) We will not post confidential information on our Web site and will not require you to post it on your Web site.

(c) You may request that we treat specific information as confidential under the Freedom of Information Act, 5 U.S.C. 552 (*see* 12 CFR part, 602 subpart B). You should draft your request for confidential treatment narrowly to extend only to those portions of a document you consider to be confidential. If you request confidential treatment for information that we do not consider to be confidential, we may post that information on our Web site after providing notice to you. On our own initiative, we may determine that certain information should be treated as confidential and, if so, we will not make that information public.

§ 611.1217 Plain language requirements.

(a) *Plain language presentation.* All communications to equity holders required under §§ 611.1210, 611.1223, 611.1240, and 611.1280 must be clear, concise, and understandable. You must:

(1) Use short, explanatory sentences, bullet lists or charts where helpful, and descriptive headings and subheadings;

(2) Minimize the use of glossaries or defined terms;

(3) Write in the active voice when possible; and

(4) Avoid legal and highly technical business terminology.

(b) *Balanced statements.* Communications to equity holders that describe or enumerate anticipated benefits of the proposed termination should also describe or enumerate the potential disadvantages to the same degree of detail.

§ 611.1218 Role of directors.

(a) *Statements by directors.* Directors may not be prohibited by confidentiality agreements or otherwise from publicly or privately commenting orally or in writing on the termination proposal and related matters.

(b) *Directors' right to obtain independent advice.* One or more directors of a terminating institution or an institution that is considering terminating have the right to obtain independent legal and financial advice regarding the proposed termination and related transactions. The institution must pay for such advice and related expenses as 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 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 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.

§ 611.1240 Voting record date and stockholder approval.

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

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

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

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

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

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

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

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

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

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

§611.1245 Stockholder reconsideration.

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

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

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

§611.1246 Filing of termination application and its contents.

(a) *Filing of termination application.* Send us your termination application no later than 90 days after you send us notice of the stockholder vote approving the termination. Please send us an original and five copies of the termination application for review and approval. If you send us the termination application in electronic form, you must send us at least one hard copy with original signatures.

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

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

(2) A certification signed by the board of directors that the board continues to support the termination, there has been no material change to any of the information contained in the plan of termination or information statement after the FCA approved the

plan of termination, and there have not been any subsequent events that could have a material impact on any of the information in the plan of termination or the termination; and

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

§ 611.1247 FCA review and approval—termination.

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

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

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

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

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

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

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

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

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

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

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

(2) Your proposed termination date;

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

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

§ 611.1250 Preliminary exit fee estimate.

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

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

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

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your plan of termination, must be independently audited by a qualified public accountant. We may, in our discretion, waive the audit requirement if an independent audit was performed as of a date less than 6 months before you submit the plan of termination.

(4) Make adjustments to assets as follows:

(i) Add back expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the

impact of the termination on the System or parties other than the terminating institution and its stockholders.

(ii) Subtract the dollar amount of estimated current and deferred tax expenses, if any, due to the termination.

(iii) Add the dollar amount of estimated current and deferred tax benefits, if any, due to the termination.

(iv) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your plan of termination and date of termination. Examples of these transactions include, but are not limited to, gains or losses on the sale of assets, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(5) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your preliminary total capital for purposes of termination.

(8) Multiply assets as adjusted above by 6 percent, and subtract this amount from preliminary total capital. This is your preliminary exit fee estimate.

(b) *Preliminary exit fee estimate—terminating bank.* (1) Affiliated associations that are terminating with you must calculate their individual preliminary exit fee estimates as described in paragraph (a) of this section.

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

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

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the quarter end immediately before the date you send us your plan of termination, must be independently audited by a qualified public accountant. We may, in our discretion, waive this requirement if an independent audit was performed as of a date less than 6 months before you submit the plan of termination.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back to assets the following:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(B) Any specific allowance for losses, and a pro rata portion of any general allowance for loan losses, on direct loans to associations that you do not expect to incur before or at termination.

(ii) Subtract from your assets and liabilities an amount equal to your direct loans to your affiliated associations that are not terminating.

(iii) Subtract the following from assets:

(A) Equity investments in your institution that are held by nonterminating associations and that you expect to transfer to another System bank before or at termination. A nonterminating association's investment consists of purchased equities, allocated equities, and a share of the bank's unallocated surplus calculated in accordance with the bank's bylaw provisions on liquidation. We may require a different calculation method for the unallocated surplus if we determine that using the liquidation provision would be inequitable to stockholders; and

(B) The dollar amount of estimated current and deferred tax expenses, if any, due to the termination.

(iv) Add the dollar amount of current and deferred estimated tax benefits, if any, due to the termination.

(v) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(vi) Adjust for the dollar amount of significant transactions you reasonably expect to occur between the quarter end before you file your plan of termination and date of termination. Examples of these transactions include, but are not limited to, retirements of equity, loan repayments, and patronage distributions. Do not make adjustments for future expenses related to termination, such as severance or special retirement payments, or stock retirements to dissenting stockholders and Farm Credit institutions.

(6) Make any adjustments we require under paragraph (c) of this section.

(7) After the above adjustments, combine your balance sheet with the balance sheets of your terminating associations after they have made the adjustments required in paragraph (a) of this section. Subtract liabilities from assets. This is your preliminary total capital estimate for purposes of termination.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the preliminary total capital estimate of the combined balance sheet. The remainder is the preliminary exit fee estimate of the bank and terminating affiliated associations.

(9) Your preliminary exit fee estimate is the amount by which the preliminary exit fee estimate for the combined entity exceeds the total of the individual preliminary exit fee estimates of your affiliated terminating associations.

(c) *Adjustments.* (1) We will review your account balances, transactions over the 3 years before the date of the termination resolution under § 611.1220, and any subsequent transactions. Our review will include, but not be limited to, the following:

(i) Additions to or subtractions from any allowance for losses;

(ii) Additions to assets or liabilities, or subtractions from assets or liabilities, due to transactions that are outside your ordinary course of business;

(iii) Dividends or patronage refunds exceeding your usual practices;

(iv) Changes in the institution's capital plan, or in implementing the plan, that increased or decreased the level of borrower investment;

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

(vi) Assets, including real property and servicing rights, that may be overvalued, undervalued, or not recorded on your books.

(2) If we determine the account balances do not accurately show the value of your assets and liabilities (whether the assets and liabilities were booked before or during the 3-year look-back adjustment period), we will make any adjustments we deem necessary.

(3) We may require you to reverse the effect of a transaction if we determine that:

(i) You have retired capital outside the ordinary course of business;

(ii) You have taken any other actions unrelated to your core business that have the effect of changing the exit fee; or

(iii) You incurred expenses related to termination prior to the 12-month average daily balance period on which the exit fee calculation is based.

(4) We may require you to make these adjustments to the preliminary exit fee estimate that is disclosed in the information statement, the final exit fee calculation, and the calculations of the value of equities held by dissenting stockholders, Farm Credit institutions that choose to have their equities retired at termination, and reaffiliating associations.

[67 FR 17909, Apr. 12, 2002, as amended at 71 FR 76118, Dec. 20, 2006]

§ 611.1255 Exit fee calculation.

(a) *Final exit fee calculation—terminating association.* Calculate the final exit fee in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period

preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (a)(4)(ii) and (iii) of this section.

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

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant.

(4) Make adjustments to assets and liabilities as follows:

(i) Add back expenses related to the termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(ii) Subtract from assets the dollar amount of current and deferred tax expenses, if any, due to the termination.

(iii) Add to assets the dollar amount of current and deferred tax benefits, if any, due to the termination.

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Make the adjustments that we require under §611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(5) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your total capital for purposes of termination.

(6) Multiply assets by 6 percent, and subtract this amount from total capital. This is your final exit fee.

(b) *Final exit fee calculation—terminating bank.* (1) The individual exit fees of affiliated associations that are terminating with you must be calculated as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (b)(5)(iii)(B) and (b)(5)(iv) of this section.

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

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back the following to your assets:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(B) Any specific allowance for losses, and a pro rata share of any general allowance for losses, on direct loans to associations that are paid off or transferred before or at termination.

(ii) Subtract from your assets and liabilities your direct loans to affiliated associations that were paid off or

transferred in the 12-month period before termination or at termination.

(iii) Subtract from your assets the following:

(A) Equity investments held in your institution by affiliated associations that you transferred at termination or during the 12 months before termination; and

(B) The dollar amount of current and deferred tax expenses, if any, due to the termination;

(iv) Add to assets, the dollar amount of estimated current and deferred tax benefits, if any, due to the termination.

(v) Subtract from liabilities any liability that we treat as regulatory capital (or that we do not treat as a liability) under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(vi) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(6) After the above adjustments, combine your balance sheet with the balance sheets of terminating associations after making the adjustments required in paragraph (a) of this section.

(7) Subtract combined liabilities from combined assets. This is the total capital of the combined balance sheet.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the total capital of the combined balance sheet. This amount is the combined final exit fee for your institution and the terminating affiliated associations.

(9) Your final exit fee is the amount by which the combined final exit fee exceeds the total of the individual final exit fees of your affiliated terminating associations.

(c) *Payment of exit fee.* On the termination date, you must:

(1) Deposit into an escrow account acceptable to us and the FCSIC an amount equal to 110 percent of the preliminary exit fee estimate, adjusted to account for stock retirements to dissenting stockholders and Farm Credit institutions, and any other adjustments we require.

(2) Deposit into an escrow account acceptable to us an amount equal to 110 percent of the equity you must retire for dissenting stockholders and System institutions holding stock that would be entitled to a share of the remaining assets in a liquidation.

(d) *Pay-out of escrow.* Following the independent audit of the institution's account balances as of the termination date, we will determine the amount of the final exit fee and the amounts owed to stockholders to retire their equities. We will then direct the escrow agent to:

(1) Pay the exit fee to the Farm Credit Insurance Fund;

(2) Pay the amounts owed to dissenting stockholders and Farm Credit institutions; and

(3) Return any remaining amounts to the successor institution.

(e) *Additional payment.* If the amount held in escrow is not enough to pay the amounts under paragraph (d)(1) and (d)(2) of this section, the successor institution must pay any remaining liability to the escrow agent for distribution to the appropriate parties. The termination application must include evidence that, after termination, the successor institution will pay any remaining amounts owed.

[67 FR 17909, Apr. 12, 2002, as amended at 71 FR 76118, Dec. 20, 2006]

§ 611.1260 Payment of debts and assessments—terminating association.

(a) *General rule.* If your institution is a terminating association, you must pay or make adequate provision for the payment of all outstanding debt obligations and assessments.

(b) *No OFI relationship.* If the successor institution will not become an OFI, you must either:

(1) Pay debts and assessments owed to your affiliated Farm Credit bank at termination; or

(2) With your affiliated Farm Credit bank's concurrence, arrange to pay any obligations or assessments to the bank after termination.

(c) *Obligations to other Farm Credit institutions.* You must pay or make adequate provision for payment of obligations to any Farm Credit institution

(other than your affiliated bank) under any loss-sharing or other agreement.

§611.1265 Retirement of a terminating association's investment in its affiliated bank.

(a) *Safety and soundness restrictions.* Notwithstanding anything in this subpart to the contrary, we may prohibit a bank from retiring the equities you hold in the bank if the retirement would cause the bank to fall below its regulatory capital requirements after retirement, or if we determine that the bank would be in an unsafe or unsound condition after retirement.

(b) *Retirement agreement.* Your affiliated bank may retire the purchased and allocated equities held by your institution in the bank according to the terms of the bank's capital revolvement plan or an agreement between you and the bank.

(c) *Retirement in absence of agreement.* Your affiliated bank must retire any equities not subject to an agreement or revolvement plan no later than when you or the successor institution pays off your loan from the bank.

(d) *No retirement of unallocated surplus.* When your bank retires equities you own in the bank, the bank must pay par or face value for purchased and allocated equities, less any impairment. The bank may not pay you any portion of its unallocated surplus.

(e) *Exclusion of equities from capital ratios.* If another Farm Credit institution makes an agreement to retire equities you hold in that institution after termination, we may require that institution to exclude part or all of those equities from assets and capital when the institution calculates its regulatory capital under parts 615 and 628 of this chapter.

[71 FR 44420, Aug. 4, 2006, as amended at 81 FR 49772, July 28, 2016]

§611.1270 Repayment of obligations—terminating bank.

(a) *General rule.* If your institution is a terminating bank, you must pay or make adequate provision for the payment of all outstanding debt obligations, and provide for your responsibility for any probable contingent liabilities identified.

(b) *Satisfaction of primary liability on consolidated or System-wide obligations.* After consulting with the other Farm Credit banks, the Funding Corporation, and the FCSIC, you must pay or make adequate provision for payment of your primary liability on consolidated or System-wide obligations in a method that we deem acceptable. Before we make a final decision on your proposal and as we deem necessary, we may consult with the other Farm Credit banks, the Funding Corporation, and the FCSIC.

(c) *Satisfaction of joint and several liability and liability for interest on individual obligations.* (1) You and the other Farm Credit banks must enter into an agreement, which is subject to our approval, covering obligations issued under section 4.2 of the Act and outstanding on the termination date. The agreement must specify how you and your successor institution will make adequate provision for the payment of your joint and several liability to holders of obligations other than those obligations on which you are primarily liable, in the event we make calls for payment under section 4.4 of the Act. You and your successor institution must also provide for your liability under section 4.4(a)(1) of the Act to pay interest on the individual obligations issued by other System banks. As a part of the agreement, you must also agree that your successor institution will provide ongoing information to the Funding Corporation to enable it to fulfill its funding and disclosure duties. The Funding Corporation may, at its option, be a party to the agreement to the extent necessary to fulfill its duties with respect to financing and disclosure.

(2) If you and the other Farm Credit banks are unable to reach agreement within 90 days before the proposed termination date, we will specify the manner in which you will make adequate provision for the payment of the liabilities in question and how we will make joint and several calls for those obligations outstanding on the termination date.

(3) Notwithstanding any other provision in these regulations, the successor institution will be jointly and severally liable for consolidated and System-

wide debt outstanding on the termination date (other than the obligations on which you are primarily liable). The successor institution will also be liable for interest on other banks' individual obligations as described in section 4.4(a)(1) of the Act and outstanding on the termination date. The termination application must include evidence that the successor institution will continue to be liable for consolidated and System-wide debt and for interest on other banks' individual obligations.

§ 611.1275 Retirement of equities held by other System institutions.

(a) *Retirement at option of equity holder*. If your institution is a terminating institution, System institutions that own your equities have the right to require you to retire the equities on the termination date.

(b) *Value of equity holders' interests*. You must retire the equities in accordance with the liquidation provisions in your bylaws unless we determine that the liquidation provisions would result in an inequitable distribution to stockholders. If we make such a determination, we will require you to distribute the equity in accordance with another method that we deem equitable to stockholders. Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the financial statements on the termination date:

(1) Make deductions for any taxes due to the termination that have not yet been recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(c) *Transfer of affiliated association's investment*. As an alternative to equity retirement, an affiliated association that reaffiliates with another Farm Credit bank instead of terminating with its bank has the right to require the terminating bank to transfer its investment to its new affiliated bank when it reaffiliates. If your institution is a terminating bank, at the time of reaffiliation you must transfer the purchased and allocated equities held by the association, as well as its share of unallocated surplus, to the new affiliated bank. Calculate the association's share before deduction of the exit fee as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date) in accordance with the liquidation provisions of your bylaws, unless we determine that the liquidation provisions would result in an inequitable distribution. If we make such a determination, we will require you to distribute the association's share of your unallocated surplus in accordance with another method that we deem equitable to stockholders. Before you distribute any unallocated surplus, you must make the following adjustments to stockholder equity as stated in the financial statements as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date):

(1) Add back any taxes due to the termination, and the exit fee; and

(2) Make any adjustments described under § 611.1250(c) that we may require as we deem appropriate.

(d) *Prohibition on certain affiliations*. No Farm Credit institution may retain an equity interest otherwise prohibited by law in a successor institution

§ 611.1280 Dissenting stockholders' rights.

(a) *Definition*. A dissenting stockholder is an equity holder (other than a System institution) in a terminating institution on the termination date who either:

(1) Was eligible to vote on the termination resolution and voted against termination;

(2) Was an equity holder on the voting record date but was not eligible to vote; or

(3) Became an equity holder after the voting record date.

(b) *Retirement at option of a dissenting stockholder*. A dissenting stockholder may require a terminating institution to retire the stockholder's equity interest in the terminating institution.

(c) *Value of a dissenting stockholder's interest*. You must pay a dissenting stockholder according to the liquidation provision in your bylaws, except that you must pay at least par or face value for eligible borrower stock (as defined in section 4.9A(d)(2) of the Act).

If we determine that the liquidation provision is inequitable to stockholders, we will require you to calculate their share in accordance with another formula that we deem equitable.

(d) *Calculation of interest of a dissenting stockholder*. Before you retire any equity, you must make the following adjustments to the amount of stockholder equity as stated in the financial statements on the termination date:

(1) Deduct any taxes due to the termination that you have not yet recorded;

(2) Deduct the amount of the exit fee; and

(3) Make any adjustments described under §611.1250(c) that we may require as we deem appropriate.

(e) *Form of payment to a dissenting stockholder*. You must pay dissenting stockholders for their equities as follows:

(1) Pay cash for the par or face value of purchased stock, less any impairment;

(2) For equities other than purchased equities, you may:

(i) Pay cash;

(ii) Cause or otherwise provide for the successor institution to issue, on the date of termination, subordinated debt to the stockholder with a face value equal to the value of the remaining equities. This subordinated debt must have a maturity date of 7 years or less, must have priority in liquidation ahead of all equity, and must carry a rate of interest not less than the rate (at the time of termination) for debt of comparable maturity issued by the U.S. Treasury plus 1 percent; or

(iii) Provide for a combination of cash and subordinated debt as described above.

(f) *Payment to holders of special class of stock*. If you have adopted bylaws under §611.1210(f), you must pay a dissenting stockholder who owns shares of the special class of stock an amount equal to the lower of the par (or face) value or the value of such stock as determined under §611.1280(c) and (d).

(g) *Notice to equity holders*. The notice to equity holders required in §611.1240(f) must include a form for stockholders to send back to you, stating their intention to exercise dissenters' rights. The notice must contain the following information:

(1) A description of the rights of dissenting stockholders set forth in this section and the approximate value per share that a dissenting stockholder can expect to receive. State whether the successor institution will require borrowers to be stockholders or whether it will require stockholders to be borrowers.

(2) A description of the current book and par value per share of each class of equities, and the expected book and market value of the stockholder's interest in the successor institution.

(3) A statement that a stockholder must return the enclosed form to you within 30 days if the stockholder chooses to exercise dissenters' rights.

(h) *Notice to subsequent equity holders*. Equity holders that acquire their equities after the termination vote must also receive the notice described in paragraph (g) of this section. You must give them at least 5 business days to decide whether to request retirement of their stock.

(i) *Reconsideration*. If a reconsideration vote is held and the termination is disapproved, the right of stockholders to exercise dissenters' rights is rescinded. If a reconsideration vote is held and the termination is approved, you must retire the equities of dissenting stockholders as if there had been no reconsideration vote.

§611.1285 Loan refinancing by borrowers.

(a) *Disclosure of credit and loan information*. At the request of a borrower seeking refinancing with another System institution before you terminate, you must give credit and loan information about the borrower to such institution.

(b) *No reassignment of territory*. If, at the termination date, we have not assigned your territory to another System institution, any System institution may lend in your territory, to the extent otherwise permitted by the Act and the regulations in this chapter.

§ 611.1290 Continuation of borrower rights.

You may not require a waiver of contractual borrower rights provisions as a condition of borrowing from and owning equity in the successor institution. Institutions that become other financing institutions on termination must comply with the applicable borrower rights provisions in the Act and part 617 of this chapter.

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

Subpart A—Standards of Conduct

Sec.
612.2130 Definitions.
612.2135 Director and employee responsibilities and conduct—generally.
612.2140 Directors—prohibited conduct.
612.2145 Director reporting.
612.2150 Employees—prohibited conduct.
612.2155 Employee reporting.
612.2157 Joint employees.
612.2160 Institution responsibilities.
612.2165 Policies and procedures.
612.2170 Standards of Conduct Official.
612.2260 Standards of conduct for agents.
612.2270 Purchase of System obligations.

Subpart B—Referral of Known or Suspected Criminal Violations

612.2300 Purpose and scope.
612.2301 Referrals.
612.2302 Notification of board of directors and bonding company.
612.2303 Institution responsibilities.

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

EFFECTIVE DATE NOTE: 86 FR 50975, Sept. 13, 2021, the authority citation for part 612 was revised, and at 86 FR 58559, Oct. 22, 2021, the effective date was announced as Jan. 1, 2023. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: Secs. 5.9, 5.17, 5.19, 5.31A of the Farm Credit Act of 1971, as amended, (Act) (12 U.S.C. 2243, 2252, 2254, 2267a); Sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

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

Subpart A—Standards of Conduct

EFFECTIVE DATE NOTE: 86 FR 50975, Sept. 13, 2021, subpart A to part 612 was revised, and at 86 FR 58559, Oct. 22, 2021 the effective date was announced as Jan. 1, 2023. For the convenience of the user, the revised text is set forth at the end of this subpart.

§ 612.2130 Definitions.

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

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

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

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

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

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

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

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

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

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