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| **Title:** | **PROPOSED RULE--Organization; Reorganization Authorities for System Institutions--12 CFR Part 611** |
| **Date of Issuance:** | **7/12/1990** |
| **Agency:** | **FCA** |
| **Federal Register Cite:** | **55 FR 28639** |

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities for System Institutions

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Credit Act of 1987 (1987 Act), Public Law 100-233, enacted on January 6, 1988 amended provisions of the Farm Credit Act of 1971 (Act) by establishing a procedure under which a Farm Credit institution may terminate its Farm Credit charter by becoming chartered as a financial institution under other Federal or State authority. The Act imposes certain requirements on an institution that wishes to terminate its status as a Farm Credit institution and authorizes the Farm Credit Administration (FCA) to impose by regulation such other conditions as the FCA considers appropriate. On December 18, 1989, the FCA published an Advance Notice of Proposed Rulemaking (ANPRM) ([54 FR 51763](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/54%20FR%2051763.docx)) requesting comments on the manner and process for implementing the new procedures under the Act. Based on a consideration of all relevant factors, including the comments received in response to the ANPRM, the FCA has determined to promulgate separate sets of regulations for banks and associations. At this time, the FCA publishes proposed regulations on terminations that are applicable to associations. Proposed regulations governing the termination of Farm Credit status by banks will be published in the near future.

**DATES:** Comments are due August 13, 1990.

**ADDRESSES:** Comments should be submitted in writing, in triplicate, to Anne E. Dewey, General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Larry W. Edwards, Director, Special Examination Division, Office of Examination Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4229, TDD (703) 883-4444;

or

Rebecca S. Orlich, Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** The Agricultural Credit Act of 1987; Public Law 100-233, amended the Farm Credit Act of 1971 (Act), 12 U.S.C. 2001 *et seq*., by adding, among other provisions, a new section 7.10 -- Termination of System Status. Section 7.10 provides that a Farm Credit institution may terminate its status as a Farm Credit institution if it satisfies the following requirements: (1) 90-day advance notice to the FCA; (2) approval by the FCA Board; (3) approval by a Federal or State authority of a charter for a bank, savings and loan, or other financial institution; (4) the payment by the institution of the amount by which total capital of the institution exceeds 6 percent of its assets, such payments to be made to the Farm Credit Assistance Fund if the termination occurs prior to January 1, 1992, or to the Farm Credit System Insurance Fund if the termination occurs after such date; (5) the payment or adequate provision for the payment of all outstanding debt obligations of the institution; (6) approval of the termination by a majority of the stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting, held prior to giving notice to the FCA Board; and (7) the fulfillment of such other conditions as the FCA Board, by regulation, considers appropriate .

In addition to the requirement of section 7.10 that a plan of termination be submitted to the FCA Board for approval following an affirmative stockholder vote, section 7.11 of the Act requires that any plan of termination, together with all information that will be distributed to the stockholders, must be submitted to the FCA Board for approval prior to the stockholder vote. The information to be distributed to stockholders must include an enumerated statement of the anticipated benefits and potential disadvantages of such action. The FCA is required to act within 30 days after a plan is filed with the FCA for approval prior to the stockholder vote. If the plan is disapproved by the FCA Board, the notice of disapproval shall specify the reasons for such disapproval.

On December 18, 1989, the FCA published an Advance Notice of Proposed Rulemaking ([54 FR 51763](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/54%20FR%2051763.docx)) (ANPRM) inviting public comment on issues raised in connection with this new authority as it affects both Farm Credit associations and Farm Credit banks. In response to the notice, comments were received from the Farm Credit Corporation of America on behalf of its member banks and the Farm Credit Banks Funding Corporation. Supplemental comments were received from the Farm Credit Bank of St. Paul, the Farm Credit Bank of Springfield, the Farm Credit Bank of Baltimore, the Farm Credit Bank of Louisville, the Farm Credit Bank of Texas, the Western Farm Credit Bank, and the Federal Intermediate Credit Bank of Jackson. In addition, comments were received from California Livestock Production Credit Association; a law firm representing the Arizona Agricultural Credit Association; a law firm representing the Buckeye Production Credit Association and the Federal Land Bank Association of Fostoria; and the Independent Bankers Association of America.

The FCA has determined that there are factors to be considered when a bank proposes to terminate its Farm Credit status that are substantially different from the factors to be considered when an association proposes to terminate its status, which require the promulgation of separate sets of regulations for banks and associations. The FCA has further determined that different issues arises when the terminating association's capital or assets constitute a significant proportion of the capital or assets of the bank of which it is a member. Accordingly, the FCA has concluded that it would be appropriate to promulgate separate sets of regulations to address these varying concerns. Proposed regulations for banks and for proportionately large associations will be published in the near future. At this time, the FCA is proposing regulations for the termination of associations whose capital or assets constitute less than 25 percent of the capital or assets of the bank from which it is a borrower. All comments received, except those which pertain exclusively to Farm Credit banks, have been considered in drafting these proposed regulations which are published today.

The proposed regulations are explained below by section, including any comments received on the subject matter contained that section.

**Part 611 -- Organization**

Subpart P -- Termination of Farm Credit Status -- Associations

*Section 611.1200 General -- Applicability*

Section 611.1200 provides that these regulations set forth the requirements applicable to the termination of Farm Credit status of an association that seeks a new charter as a national or State bank, savings and loan association, or other type of financial institution. These regulations apply only to those associations whose capital or assets constitute 25 percent or less of the capital or assets of the bank from which it is a borrower. The FCA has determined to promulgate separate sets of regulations for banks, proportionately large associations, and proportionately small associations because of the different issues that must be addressed in each of the three situations.

*Section 611.1205 Definitions*

Section 611.1205 provides definitions applicable to the following terms in this subpart:

"Commencement resolution" refers to the resolution which must be adopted by an association at the outset of the termination process.

"GAAP" refers to generally accepted accounting principles as that term is generally understood. The regulation clarifies that the application of GAAP in particular circumstances will be consistent with interpretations of the FCA.

"QFI" refers to "other financing institution" as that term is defined in the Act and existing regulations.

"Reconsideration vote" refers to a second vote on the transaction which is permitted by statute if 15 percent of voting stockholders petition for such vote within a certain time period after the vote on termination.

"Successor institution" refers to the entity which will succeed to the interests of the association upon termination of the association's Farm Credit status.

"Terminating association" refers to an association which is seeking to terminate its Farm Credit status and to become chartered as a bank, savings and loan association, or other type of financial institution.

"Termination vote" refers to the stockholder vote required to approve the termination of Farm Credit status.

*Section 611.1210 Advance Notification*

Section 611.1210 provides that an association which intends to seek to terminate its status must, upon commencement of the termination process, notify the FCA and provide appropriate disclosure to prospective borrowers, current equity holders and persons who may purchase or retire association equity. Section 611.1210(b)(2) requires that an explanation, in summary form, of the contemplated transaction be sent to all equity holders. The FCA believes that such notification at the commencement of the termination process is necessary since prospective borrowers may be considering the establishment of a credit relationship that could last up to 40 years. The possibility that the terminating association will terminate its Farm Credit status in the near future and thereby change certain aspects of the loan relationship could influence a prospective borrower's choice of lender.

In addition, in the present circumstances, there is no real market for association stock even though the Act and FCA regulations require that such stock be transferable. Because holders of common stock will be in a position to realize their pro rata interest in the net asset value of the association, the effect of the mere announcement of the intent to terminate could create a market for association stock that did not previously exist. Consequently, a stockholder's decision to request the retirement of common stock or participation certificates or to sell such equities to another party before the termination would deprive the stockholder of the opportunity to share in the net asset value of the association or the successor institution. Holders of equities other than common stock and participation certificates would lose an opportunity to exchange their equities for stock of the successor institution if they sold or retired their interests prior to the termination date.

The FCA believes that these concerns can be addressed by ensuring that each present or prospective stockholder is given a timely and adequate disclosure of the proposed action and the effect it may have on that person's rights as a stockholder. In addition, the FCA recognizes that, in the absence of a provision for a special class of stock equity interests sold by the terminating association at par or face value during the termination process would have the effect of diluting the interests of existing stockholders in the net worth of the association. The FCA believes that the terminating association should have the option to decide not to extend to purchasers of common stock and participation certificates during the termination process the right to share in the net worth of the association. Accordingly, the regulation permits an association's board to adopt a bylaw providing for special classes of stock and participation certificates which are identical to the equities purchased by borrowers as a condition of obtaining a loan, except that the special classes of equities will not entitle the holder to share in the net asset value of the association upon the termination of Farm Credit status. Such holder shall be limited to receiving either an equity interest in the successor institution equal to the amount of the purchase price of the stock or participation certificate or, in the event that he did not vote in favor of termination at the termination vote, a reimbursement of the purchase price of the stock. The issuance of these special classes of stock and participation certificates will prevent borrowers from seeking loans during the termination process for the purpose of obtaining stock which would have a realizable value in excess of the purchase price. The purchasers of this special class of common stock or participation certificates will otherwise have the same rights as existing holders, including the right to vote if voting stock is purchased on or before the voting record date. Should the proposed termination not occur, these special classes of stock and participation certificates shall automatically convert into the classes of stock and participation certificates which are routinely issued to new borrowers.

To permit the terminating association to issue these special classes of voting stock and participation certificates which will entitle the association to treat the holders differently from other voting stockholders and participation certificate holders, the proposed regulation waives those provisions of § 615.4230(b) which would otherwise require the equitable treatment of all equity holders. All other statutory and regulatory requirements pertaining to stock authorization and issuance by the association must be complied with. The FCA notes in this connection that, in order for the association to be able to begin issuing the special classes of stock and participation certificates immediately after adoption of the commencement resolution, the bylaw authorizing the special stock must already have been adopted by the board and approved by the stockholders prior to the board's adoption of the commencement resolution, in compliance with section 4.3A(c)(2) of the Act which requires stockholder approval before a bylaw can take effect. Approval of the bylaw authorizing the stock could occur at any time prior to adoption of the commencement resolution and would not be considered to be an action commencing the termination process for purposes of § 611.1210(a).

The proposed regulation also provides that a computation of an estimated exit fee be submitted by the terminating association to the FCA within 15 days after the association has submitted the commencement resolution. The purpose of this requirement is to ensure that exit fee discussions between the terminating association and the FCA should be opened at an early stage in the termination process and that any disagreements regarding the computation or amount of the exit fee be resolved before the termination application is accepted by the FCA for filing. Upon receipt of the terminating association's estimated exit fee, the FCA will review the association's computations to determine whether they are in accord with the requirements of § 611.1240. Within 45 days, the FCA will notify the association of its confirmation of the estimated exit fee or will inform the association of any revisions which must be made to the computation. In the event that the terminating association disagrees with the FCA's determination, the association will have the opportunity to request the FCA to reconsider its decision. Such request must be in writing and must explain the specific areas and reasons for disagreement. The FCA will then have 15 days to reconsider its previous determination and to confirm or revise it. As provided in § 611.1212(d), until such time as the FCA and the terminating association agree upon the computation and amount of the estimated exit fee, the termination application shall not be accepted for filing and shall not be given a filing date.

The FCA notes that, at the time the estimated exit fee is submitted for review, the FCA will also review all transactions which have occurred since the adoption of the commencement resolution or which are expected to occur prior to termination to determine whether any such transactions will result in adjustments to the exit fee. Agreement by the terminating association and the FCA on the treatment of these transactions would also be required before the termination application is accepted for filing. In addition, the FCA notes that the estimated exit fee will have to be updated for the information statement to reflect the requirement in § 611.1240(c) that the computation date for the actual, as opposed to the estimated, exit fee be the quarter end preceding the filing date.

*Section 611.1211 -- Filing of Termination Application and*

*Section 611.1212 -- Filing Date of Termination Application*

Sections 611.1211 and 611.1212 set forth the required contents of the termination application and articulate the standard for determining when the application is considered filed.

Upon receipt of the application, the FCA will examine the contents to determine whether any of the required information has been omitted which would prevent the FCA Board from proceeding with a thorough review of the application. If there are significant omissions, the FCA will so inform the terminating association. Section 611.1212 provides that the FCA will notify the applicant within 10 business days of the receipt of an application as to whether the application is substantially complete and therefore accepted for filing. If the application is not accepted for filing at that time, the applicant will be notified of any deficiencies that have been identified. The application will not receive a filing date until all such deficiencies are addressed. The FCA will not commence its review of the application until it is filed, at which time the 30-day review period provided for in section 7.10 and § 611.1215(b) will begin. The FCA believes that 10 business days are sufficient time to allow for docketing of the application, duplication, and distribution to the various divisions that will be involved in the review, and a brief examination to determine whether any significant required information is missing. Such examination will not be a review of the merits of the application. A determination that the application is substantially complete will not indicate that the FCA will not require further disclosures; it indicates merely that the FCA has enough information to begin a full review of the application.

Section 7.11(a)(2) requires the FCA to either approve or disapprove an application within 30 days after it is filed. The 30-day period will not begin to run until the application is considered substantially complete and thus capable of being reviewed and acted on by the FCA. Consistent with the requirements of the Act, that date will be the filing date of the application.

Paragraph (c) of § 611.1212 ensures that there will be a period of at least 60 days after notification of the intention to commence the termination process, and prior to the filing date, in order to allow the FCA sufficient time to seek another association to provide service to the terminating association's territory. The FCA believes the continuation of Farm Credit service to the territory to be of prime importance in carrying out its statutory mandate to ensure the availability of "an adequate and flexible flow of money into rural areas." Therefore, where the terminating association is the exclusive provider of certain Farm Credit services in part or all of its territory, the FCA needs a 60-day period to determine whether arrangements can be made for a new or existing association to provide service in the territory. However, a failure by the FCA to complete such arrangements would not cause any further delay in the processing and review of the application. The FCA believes that, in nearly all cases, the terminating association will require more than 60 days to prepare the termination and new charter applications, reach an accord with the bank on the repayment of debt and the retirement of equities, and resolve all related matters. It is therefore anticipated that the termination application will rarely be submitted less than 60 days after the first notification to the FCA. Consequently, it is unlikely that this provision will actually extend the length of the termination process.

The FCA notes that, where time periods are set forth in these regulations, days are to be interpreted as calendar days except where specifically denoted as business days.

*Section 611.1215 -- FCA Review and Approval*

Section 611.1215 reiterates the statutory time constraints for FCA Board review and enumerates the conditions which must be fulfilled in order to obtain final approval of the termination and revocation of the Farm Credit charter. The six conditions for final approval in paragraph (e) are required to assure the FCA that all appropriate steps for the termination of the association and the formation of the successor institution have been completed. Submission of copies of relevant documents and other information is required to establish that all liabilities of the terminating association are assumed or otherwise disposed of. Evidence of the grant of a new charter may be furnished by a letter from the new chartering authority addressed to the FCA. Alternatively, the association can provide FCA evidence of the preliminary grant of a new charter, with final FCA approval contingent upon the granting of the new charter. If the grant of the new charter is contingent upon other action, such as the grant of deposit insurance, then FCA approval will not be final until such other contingent action occurs. The association's Farm Credit charter will be revoked upon the completion of the last to occur of certain events, including receipt of final payment of the exit fee. Since the aforementioned events involve actions the association must take, the actual date of termination will depend largely upon the time the association requires to complete such actions.

*Section 611.1220 -- Voting Record Date and Stockholder Approval*

Proposed § 611.1220 establishes the procedures by which the stockholders of the terminating association shall vote on and approve the proposal to terminate Farm Credit status. The proposed regulation provides that stockholders eligible to vote on the termination must own stock in the terminating association as of a voting record date which shall not be more than 70 days prior to the stockholder vote. The voting record date shall be determined in accordance with the terminating association's bylaws, if such bylaws provide for a voting record date not more than 70 days prior to the stockholder vote; otherwise, the date shall be set by the board of directors.

The timetable in the proposed regulation is consistent, to the extent possible, with the provisions of general corporate law. The Revised Model Business Corporation Act provides in section 7.07 that the record date may not be more than 70 days prior to the stockholder vote or action required. The basis for setting a record date in general corporate law is to establish a fixed point in time at which the identity of the persons entitled to notice of and to vote at a meeting will be determined. The situation for the terminating association is unique in that all equity holders must receive the information statement, rather than only those entitled to vote on the termination. However, the terminating association must have an established point in time at which it can determine which equity holders are entitled to vote on the termination.

The proposed regulation provides that the record date for the termination vote is also the date used to determine which stockholders are eligible to vote in a reconsideration vote. The reconsideration vote is designed for the stockholders to reexamine their vote on the termination and change their vote based on a further review of the information presented to them or based on new information. Thus, it is appropriate for the same stockholders to be eligible to vote in the reconsideration as were eligible to vote on the proposed termination. In addition, this requirement is designed for the convenience of the terminating association by using the same record date for each vote. It is also important that after a favorable termination vote, new stockholders are not sought for the sole purpose of guaranteeing a successful reconsideration vote or to defeat the reconsideration effort. This is an equitable consideration in order to insure the fairness of the reconsideration vote.

The proposed regulation addresses section 4.20 of the Act which prohibits institutions from using signed ballots and requires that institutions adopt procedures safeguarding the stockholders' right to a secret ballot in any election or proceeding subject to a vote of the stockholders. In order to implement this provision, the proposed regulation requires the terminating association to adopt procedures which insure the impartiality, confidentiality and security in the termination vote. While providing for the maintenance of confidentiality, the proposed regulation contains provisions that will enable institutions to identify the stockholders voting against termination for the purpose of determining eligibility for dissenters' rights. These provisions are similar to those found in § 611.330 regarding confidentiality in the election of directors. The proposed regulation requires the terminating association to ensure the confidentiality of the termination vote through the use of an independent party to establish identity codes, tabulate votes and verify that stockholders who exercise dissenters' rights in accordance with § 611.1260 did not vote in favor of termination. Such independent party shall not be a director, officer, or stockholder of the terminating association or the successor institution. However, the terminating association may use a retained accounting firm, law firm or other similar party to establish identity codes and tabulate the votes in order to maintain impartiality and security in the voting process. This exception to the general confidentiality provisions allows the terminating association to be informed of the vote of a stockholder only if such stockholder exercises the right to dissent from the transaction and retire stock in the terminating association.

The proposed regulation provides in accordance with § 7.10 that the proposal to terminate Farm Credit status must be approved by a majority of the stockholders of the terminating association voting, in person or by proxy, at a duly authorized stockholders' meeting. Further, the terminating association must notify stockholders and other holders of equity interests of the results of the final vote within 30 days and must notify stockholders of their right to file a petition for reconsideration within 35 days of the date the terminating association mails the notice. The 35-day period takes into consideration a 5-day mailing period in addition to the 30-day period required in section 7.9(b)(3) of the Act. The provision for the 5-day period from the date of mailing is similar to the provision in § 611.525 regarding stockholder reconsideration of transfers of authorities and assets.

*Section 611.1225 -- Requirements for Information Statement*

The proposed regulations at § 611.1225 specify the types of disclosures that must be provided in an information statement prior to a stockholder vote on the termination.

The disclosure requirements are similar to those for annual reports found in § 620.3 and for association mergers found in § 611.515 and include pro forma financial information on the proposed successor institution. The information statement must also include a discussion of the significant differences between the terminating association and the successor institution, and the consequences of the termination to all holders of equity, in their capacities as both equity holders and borrowers. Because a full discussion of these matters may necessitate a lengthy disclosure, the FCA has decided not to require that a copy of the plan of termination be furnished to equity holders. Instead, the information statement must include a description of the salient points of the plan of termination and must also contain an "Executive Summary" at the beginning of the documents. The purpose of the Executive Summary is to give readers of the document a prominently located, concise explanation of the major points of the termination, with an emphasis upon its overall effect on borrower/equity holders, who make up nearly all of the association's equity holders.

Certain other requirements of the information statement merit comment. The enumeration required in paragraph (d) of potential benefits and disadvantages of the termination is intended to fulfill the statutory requirement in section 7.11(a)(1) of the Act and should be more detailed than the Executive Summary.

Paragraph (g) requires that holders of eligible borrower stock be clearly informed that the special protection of such stock accorded by the Act will terminate when the association terminates its Farm Credit status. If the stock of the successor institution to be received in exchange for eligible borrower stock will be at-risk stock, holders must be so advised.

Paragraph (h) requires the association to disclose how the termination will affect rights borrowers are given under the Act. If the successor institution is an other financing institution (OFI), such rights would be contingent upon, among other things, whether a particular loan was pledged. Alternatively, the successor institution, although not legally obligated to extend borrower rights, may choose to do so in the interest of keeping loans with the institution.

Paragraph (h) also requires that borrowers be informed of the name and address of the Farm Credit institution that will be authorized to serve the territory, if known, and an explanation of how to transfer a loan to such association. The FCA believes that borrowers should have the opportunity to keep their loans with a Farm Credit association, subject to the new association's acceptance of the loan, and that the transfer should be accomplished with a minimal amount of time and effort expended by the borrower.

Paragraph (m) requires additional disclosures regarding the treatment of borrowers by the successor institution; such information will further aid borrowers in determining whether to transfer their loans to another association.

*Section 611.1230 -- Plan of Termination*

The plan of termination requires information supplemental to the information statement which is necessary to provide a complete picture of the proposed termination. Documents to be submitted include, but are not limited to, any purchase and assumption or merger agreements, stock subscription agreements, employment agreements, and agreements between the terminating association and the Farm Credit Bank; a description of how the successor institution will succeed to the interests of the terminating association; a copy of the charter application submitted to the new Federal or State chartering authority; and a statement setting forth the parameters of any continuing credit relationship the successor institution will have with the Farm Credit Bank.

*Section 611.1235 -- Stockholder Reconsideration*

The proposed regulation at § 611.1235 provides stockholders with the right to reconsider the approval of termination in accordance with section 7.9 of the Act. In order to seek a reconsideration vote, 15 percent of the stockholders of the terminating association must sign a petition for reconsideration and file a copy of the petition with the FCA within 35 days after the date of mailing of the notification to the stockholders of the final results of the termination vote required under § 611.1215. The petition shall be filed with the terminating association which will within 5 days certify that the signatures on the petition are the signatures of stockholders of the association eligible to vote on the voting record date established pursuant to § 611.1220. The proposed regulation requires that the petition include the name of a person designated as the petitioners' representative who shall represent the interests of the petitioners in the reconsideration process. The petitioners' through the petitioners' representative and the terminating association shall have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be mailed to the stockholders and other equity holders along with the notice of the stockholders meeting for the reconsideration vote. The designation of a petitioners' representative is proposed in order to keep the statements supporting the petition to a reasonable length and to serve as a contact person for the stockholders and the association to coordinate the preparation and submission of the supporting statement and other matters.

If the terminating association certifies that at least 15 percent of the eligible voting stockholders have signed the petition for reconsideration, the proposed regulation requires a special stockholders meeting to be called within 60 days of the date the stockholders were notified of the final result of the termination vote. The proposed regulation further provides that if the majority of the stockholders voting in person or by proxy at the duly authorized stockholders meeting vote against the termination, the termination is not approved. However, if a majority of the stockholders do not vote against the termination, the proposed regulation provides that the termination shall be effective in accordance with the provisions of § 611.1215(f), but not less than 15 days after the reconsideration vote. The 15 days are necessary to ensure that the FCA has an opportunity to review the documents and grant final approval.

The proposed regulation requires the apportioning of the expenses for the reconsideration process between the terminating association and stockholders in order to insure that the rights and interests of both parties are treated as fairly and equitably as possible, while permitting stockholders their right to reconsider the termination vote. The proposed regulation requires that the terminating association shall furnish, at its expense, a list of the names and addresses of stockholders eligible to vote to any voting stockholder requesting such list during the petition period. It further requires that any other expenses for the petition, such as those incurred in circulating and securing 15 percent of the stockholders' signatures on the petition, shall be borne by the petitioners. This requirement is proposed in order to minimize the disruptive effect and the cost to the association of petition efforts that do not earn the requisite signatures of 15 percent of the eligible voting stockholders of the association.

The proposed regulation further requires that if the petitioners secure the signatures of 15 percent of the stockholders, the reasonable expenses of the reconsideration vote required by section 7.9 of the Act shall be paid by the terminating association. Reasonable expenses include but are not limited to the duplicating costs for the statements regarding the reason for the reconsideration, the mailing costs for notice to the stockholders, and the expenses necessary to hold a stockholders' meeting. Reasonable expenses would not include extraordinary fees of counsel or accountants retained to assist the stockholders in preparing the statement to the submitted with the notice of the meeting.

The requirement for the terminating association to pay certain of the costs of the reconsideration vote takes into consideration that the enactment of section 7.9 was motivated in part by a concern that stockholders of the association may have been unduly influenced to approve the termination proposal and that those stockholders should be given an opportunity to fully reconsider their earlier votes. The proposed regulation is designed to give full effect to this right by allowing the stockholders to be able to initiate a petitioning action without having to bear the expenses of the vote. The terminating association should view the expenses of the vote as a cost of doing business or becoming another type of institution.

*Section 611.1240 -- Exit Fee*

Section 611.1240 -- sets forth the procedures for calculating the exit fee required by section 7.10 of the Act. The Act requires that terminating Farm Credit institutions pay an exit fee equal to the amount by which the institution's total capital exceeds 6 percent of the institution's assets. As pointed out in the ANPRM, the Act does not define "total capital" or "assets" for purposes of computing the exit fee. Respondents to the ANPRM were sharply divided regarding the definition of "total capital." One respondent expressed the view that Congress mistakenly used the term "total capital" and that it actually intended to include only unallocated surplus in calculating the exit fee. This argument is based on the fact that an earlier version of the bill required an exit fee based on unallocated surplus. The FCA disagrees with this contention and can find no basis for concluding that Congress erred in substituting the term "total capital" for "unallocated surplus." Respondents were also divided over whether protected stock should be included in total capital for purposes of calculating the exit fee. The definition proposed in these regulations includes protected stock as part of capital. Many associations have already retired protected stock by converting it to at-risk stock or through straight retirement and reduction of capital. Any protected stock remaining upon termination would lose its protected status in the successor institution and would thus become capital in the fullest sense of that term. Therefore, the Board saw no basis for excluding it from the calculation.

Most respondents to the ANPRM expressed the view that financial statements prepared on the basis of generally accepted accounting principles (GAAP) should be the basis for calculating the exit fee. The FCA believes that while GAAP-based financial statements provide for a good starting point for the exist fee calculation, strict application of GAAP may not result in the fairest treatment of certain types of transactions.

GAAP is promulgated to assure that certain transactions are accounted for in a uniform manner so that the reader of financial statements can be reasonably assured that financial information is presented in a uniform and consistent manner from period to period and from one institution to another. Such accounting treatment may or may not represent the "value" of the institutions, nor does it account for fluctuations in the level of assets or capital from one period to another. Accordingly, as recommended by some of the respondents to the ANPRM, the proposed regulation provides that the exit fee shall be calculated based on the average daily balance of assets and total capital for the 12 months preceding the computation date and that certain adjustments may be made to the account balances. In some associations, asset balances fluctuate widely depending on the type of agriculture financed by the association. In these cases, if the exist fee is calculated as of a specific point in time, the timing of the exit fee computation date could have a significant impact on the amount of the fee. Using average daily balances rather than balances as of a specific date mitigates this problem.

Some individual transactions can increase or decrease the exit fee to such a degree that average balances are not sufficient to offset their impact. The regulation proposes that these transactions will be individually evaluated and adjustments made in the account balances based on the circumstances in each case. It should be noted that the required adjustments will be solely for the purpose of calculating the exit fee and, as discussed below, determining the rights of dissenting stockholders. The association will not be required to restate its financial statements to reflect these adjustments.

One respondent to the ANPRM stated that it was appropriate for the FCA to implement measures to prevent circumvention of the exit fee. Another respondent stated that FCA should retain discretion to review any extraordinary transactions and eliminate their impact on the exit fee if circumstances warrant. However, one respondent stated that an association that increased assets would be required to retain sufficient capital to meet the capital requirements of the successor institution, thus suggesting that adjustments would not be necessary.

The adjustments contemplated generally fall into one of three categories. In the first category are transactions that good business judgment indicates are necessary but the prospective impact on the exit fee causes the association to delay taking actions. For example, an association with a weak capital position might improve its financial strength by increasing capital or selling assets. Either action might increase the amount of the exit fee. In these circumstances, the association should not be penalized for entering into transactions that are clearly in the best interest of the association. The second category of adjustments would be transactions where the conservative nature of certain aspects of GAAP does not result in a fair reflection of the value of the institution. This may include adjustments to the value of certain assets or quantification of certain contingent liabilities. The final category of adjustments would be discretionary acts by an association that are outside the ordinary course of business that have the effect of reducing the exit fee. This would include such transactions as extraordinary dividends, cash patronage refunds, or changes in capital programs.

In determining whether the computation date balances will be adjusted, the FCA will examine the transactions of the association for the 3 years preceding the date of the adoption of the commencement resolution. The three-year "look back" is consistent with the business and capital planning requirements of § § 615.5200(b) and 618.8440 of these regulations. The Board considered, but did not adopt, a two-year "look back" period. The Board specifically invites comments regarding the appropriate time frame.

Whether or not adjustments to the balances will be made will depend on the circumstances presented by each individual case. To guide institutions in considering terminating, the FCA Board provides the following illustrative explanations of the application of the types of adjustments cited in the body of the regulation. The FCA Board does not, however, intend to limit the possible types of adjustments to those listed below.

(1) The allowance for loan losses may be adjusted if the amount reflected in the account is not, in FCA's judgment, based on GAAP. This is consistent with the treatments afforded the allowance for loan losses in calculating the permanent capital ratio where excess allowances are included as part of capital. This treatment is also consistent with a majority of the comments received in response to the ANPRM;

(2) Extraordinary purchases and sales of assets may affect the amount of the exit fee. One method by which an association can reduce the exit fee would be to inflate the balance sheet by purchasing assets. Conversely, good business judgment may suggest that an association should sell assets to accomplish essential business purposes. Association boards of directors contemplating termination may be reluctant to enter into such transactions because of the impact on the exit fee. This could eliminate exit fee considerations from decisions to buy or sell assets;

(3) Institutions that pay extraordinary dividends or patronage refunds may, for purposes of calculation of the exit fee, be required to add the amount of extraordinary payments back to the capital accounts prior to calculating the exit fee. This provision does not preclude an association's payment of dividends or cash patronage refunds if such actions are consistent with the association's operating history;

(4) The 1987 Act required all associations to adopt a new capital plan and authorized a significant reduction in the required level of borrower investment. Most associations adopted such plans in 1988. As contemplated by the Act, most such plans resulted in a reduction in borrower investment and consequently in total capital. The FCA does not believe that the regulations should attempt to recapture retirements of capital as a result of these initial capital plans that were authorized by Congress unless other evidence suggests such plans were influenced by the association's desire to terminate its status or the initial plan resulted in unsafe capital levels. Therefore, absent such evidence, the FCA would not require any adjustments resulting from the association board's initial capital plan, unless the FCA examinations conducted since the capital plan was adopted have concluded that the association's capital levels were inadequate. However, subsequent plans that reduce capital levels within the 3-year review period may be considered actions in contemplation of termination, and adjustments may be required. Associations that need to increase capital subsequent to the initial plan may be reluctant to do so if they contemplate termination. These regulations are not intended to interfere with the exercise of good business judgment. Therefore, associations may have the negative impact of such decisions on the exit fee adjusted if the events creating the need for additional capital were not caused by an unsafe initial capital plan;

(5) Occasionally, contingent liabilities may be quantifiable but uncertainties regarding timing may not require that they be recorded as liabilities on the books of the association under GAAP. For example, loss-sharing plans typically require the calculation and recognition of an obligation as of a date certain. Prior to such date certain -- *i.e.*, prior to the actual recognition of the loss -- it is often possible to make a reasonably accurate calculation of what such obligation will be. In such cases, for purposes of calculating the exit fee, associations may be permitted to consider the effect of such liabilities when the amount can be reasonably determined and the eventual recordation under GAAP is assured;

(6) Certain assets which under GAAP may not be reflected on the balance sheet or may be reflected at less than market value must be appraised and the appraised value used for computing the fee. The assets requiring adjustments are generally those that the association is holding for eventual sale or revenue production such as acquired property or mineral rights. The value of assets intended for use in an ongoing business such as office buildings do not require adjustment;

(7) Assets may be reduced by the amount of any loan participation purchases from other Farm Credit institutions. This adjustment is made because many associations require institutions from which loans are purchased to acquire stock to support such purchases. This stock owned by other Farm Credit institutions is not eligible for conversion to stock in the successor institution. Therefore, the stock is deleted from capital and the loan participation purchases are deleted from assets in computing the exit fee. Additionally, since extraordinary purchases of loans to increase assets are one method by which associations can artificially reduce the impact of the exit fee, reducing the assets by the loan participation purchases will prevent such effect;

(8) Under GAAP, an association may have recorded an income tax liability for the current period and have an unrecorded tax loss carry forward that would offset the liability. In calculating the exit fee, the transaction recording the tax liability would be reversed to more appropriately reflect the amount of taxes that will ultimately be due;

(9) Section 611.1240 also requires the reversal of transactions recording expenses associated with the termination effort. Such expenses as accounting and legal fees, printing, mailing, and tax impacts may not be charged to capital in computing the exit fee. Such adjustments will not include expenses for association staff time, supplies, and other such miscellaneous expenses.

If the FCA requires an adjustment to the association's records for purposes of computing the exit fee, the full effect of the adjustment will be reflected on the association's accounts. To assure that all relevant facts surrounding an adjustment are considered, the regulations provide an opportunity for the association to review all such adjustments and request reconsideration by FCA.

The FCA Board recognizes the extreme importance of the method for calculating the exit fee and especially invites comments on this section of the regulation.

*Section 611.1250 -- Repayment of Debts*

*and*

*Section 611.1255 -- Retirement of Equities Owned*

Section 611.1250 sets forth the requirements for terminating associations' repayment of debts. Most respondents to the ANPRM expressed the view that this area should be left to be negotiated between the parties. With some minimal limitations, the FCA Board concurs. As the regulation recognizes, some successor institutions may be eligible and desire to establish an OFI relationship with the Farm Credit Bank under the terms of part 614, subpart P, of these regulations. Under these circumstances, the terms and conditions are subject to negotiation between the parties. Those successor institutions that do not establish such a relationship may negotiate a phased repayment provided the debt is repaid in full within 3 years. For these latter institutions, the Farm Credit Bank may not continue the make additional loans to the successor institution except as may be necessary to protect the bank. Whether or not the Farm Credit Bank permits phased repayment rather than repayment upon termination is within the bank's discretion.

Those associations which have explored termination and several of the respondents to the ANPRM recognized that retirement of equities the association owns in the bank may be essential to the future viability of the successor institution. The FCA Board concurs that this issue is important and that refusal of a bank to retire such equities under reasonable terms amounts to bank authority to veto an association's right to terminate. Therefore, the proposed regulations at § 611.1255 requires the bank to retire equities if it can do so and still meet the minimum capital standards pursuant to section 4.3 of the Act. If retiring such equities will cause the bank to fail to meet the minimum capital standards, the bank must negotiate retirement of equities within a reasonable time period. If the parties are unable to reach agreement, the FCA may require the retirement of equities. However, if the retirement of equities would threaten the viability of the bank, such retirement shall not be required as part of the termination without the FCA's consent. In adopting these requirements, the FCA Board does not intend to permit banks to use the refusal to retire equities as a way to frustrate an association's desire to terminate its status as a Farm Credit institution. However, the FCA believes that the provision for termination of Farm Credit status in section 7.10 of the Act does not permit an override of the minimum capital adequacy requirements of section 4.3 of the Act. In addition, the FCA believes that it must take into consideration the effect of the termination on the viability of other Farm Credit institutions. The provision for negotiation of an arrangement other than retirement prior to termination was allowed to accommodate the matching of equity retirement with repayment of indebtedness or other circumstances that might not be detrimental to the terminating association. However, the terminating association may not continue to own voting stock in the bank after its Farm Credit status has been terminated.

The proposed regulations would not prohibit banks from retiring association-owned equities when the bank has issued an continues to have issued and outstanding preferred stock to the Financial Assistance Corporation (FAC). On this point the respondent Farm Credit Banks were sharply divided, with three Banks recommending that a bank be prohibited from retiring association-owned equities under such circumstances and three Banks recommending that the matter be left to the discretion of the bank. The FCA concurs with the observation of responding associations that the retirement by the bank of association-owned equities may be essential to the future viability of the successor institution. A blanket prohibition on the retirement of equities even where such retirement does not raise capital adequacy or other viability concerns would amount to bank authority to veto an association's right to terminate. The FCA does not believe such a blanket prohibition is necessary, especially in view of other safeguards provided by the regulations pertaining to viability and maintenance of minimum capital standards. Therefore, retirement of stock in such circumstances would be a matter to be negotiated by the bank and the terminating association. However, in cases where the association has issued stock to the FAC or where the bank has issued stock to FAC (which stock remains outstanding) and used the proceeds to invest in stock of the terminating association, the terminating association would be required to retire all its FAC assistance-related stock prior to termination. The FAC considered the issue of the interest cost associated with the FAC obligations but did not include a provision for payment of the interest in the proposed regulations. One alternative considered would require the terminating association to be responsible for the cost of any interest on FAC obligations used to assist the association above the current cost of 1-year bonds until the maturity date of the FAC obligations. The FAC requests comments on this issue.

*Section 611.1260 -- Dissenters' Rights*

A new § 611.1260 is proposed to address the rights of stockholders who dissent to the termination. As in general corporate law, stockholders who object to extraordinary corporate transactions must be given dissenters' rights so that they are not bound by those transactions which would result in their ownership interest in the corporation being substantially changed or affected by the action. Historically, a dissenting stockholder's right to receive payment for his shares was based on the theory that the extraordinary transactions amounted to a conversion of the stockholder's interest in the corporation. As a result of a majority vote in favor of termination, a stockholder's equity interest in the terminating association is being completely changed depending upon the type of institution the terminating association becomes. Consistent with these general principles, the FCA believes that a decision by an association to terminate its Farm Credit status will result in such a fundamental change in the nature of the institution and the stockholders' investments in the institution that dissenting stockholders should not be required to convert their equities into investment in the institute in the successor institution.

The FCA notes that a termination of status is fundamentally different from the types of reorganization activities, such as mergers, territory transfers, and special reconsiderations, in which no dissenter's rights are provided. For instance, while a merger of an association with another association may result in a change in the size, loan volume, or earnings prospects of the association in which shares are owned, the essential business prospects, organizational structure and statutory provisions governing the institution are unchanged. The stockholder will continue to own stock in a cooperatively structured, borrower-owned and controlled association which is governed by the same organic act. In contrast, when an association terminates its status, the resulting entity will no longer be part of the Farm Credit System and will be organized, owned and controlled under a completely different statutory framework. Moreover, the resulting entity may not be borrower-owned and may actually be restricted in the types and amounts of loans it could make to its stockholders. For example, national banks and savings and loan associations are prohibited from making certain loans to holders of significant amounts of stock.

FCA considered several options for determining the value that stockholders dissenting from the termination would be entitled to receive. A majority of the commentors suggested that the rights of dissenting stockholders to share in the equity interest of the terminating association should be governed by the bylaws of the terminating association in the event of a liquidation of the institution. Association bylaws are required to provide that the value distributed to stockholders in a liquidation is typically determined after the payment of all claims and expenses, the retirement of stock at par, the retirement of allocated equities. The remaining capital is paid to the holders of voting stock and participation certificates on a pro rata basis. In most cases, holders of equity interests other than voting or common stockholders and participation certificate holders receive face or par value per share plus any accumulated dividends in the event of liquidation of the association. Common stockholders and participation certificate holders generally receive par value for their share plus a pro rata interest in any remaining assets of the association.

The proposed regulation provides that dissenting stockholders shall be paid in accordance with the priorities in liquidation set forth in the bylaws of the terminating association. Because there will not be an actual liquidation and distribution to the stockholders, the price paid to dissenting common stockholders and holders of participation certificates shall be the book value at the termination date adjusted to reflect any increase or decrease in asset value resulting from the appraisals required to determine the exit fee in § 611.1240. The appraisals of asset value conducted to determine the amount of the exit fee will yield a value as close as possible to the true value of the assets. The value arrived at through this computation most nearly reflects the value that stockholders would receive based on a right of appraisal and distribution if the institution were liquidated as provided for in the receivership regulation at § 611.1167. If the terminating association's bylaws do not provide for a distribution upon liquidation, the distribution should be based on the requirements of the capitalization bylaws of the association, with the exception that dissenting common stockholders and participation certificate holders shall still receive book value per share adjusted to reflect the valuation of assets in § 611.1240. The proposed regulation also requires that holders of eligible borrower stock receive at least par value for their shares in accordance with section 4.9A of the Act.

The FCA believes that dissenting stockholders should be paid in accordance with the terminating associations' bylaws so that the price paid will essentially be the value the stockholders would receive upon liquidation. This determination follows the holding in *Amarillo Production Credit Association* v. *Farm Credit Administration,* 887 F.2d 507 (5th Cir. 1989). The Court of Appeals determined in *Amarillo* that a plan to transfer assets and liabilities to a new State-chartered association, distribute new institution stock in exchange for the association stock, and request cancellation of the Farm Credit charter approximated a voluntary liquidation rather than a corporate reorganization. Although the Amarillo PCA's plan to charter a new State institution and discontinue existence as a Farm Credit institution was developed before section 7.10 was enacted, the FCA believes that termination of Farm Credit status should be considered an effective liquidation entitling dissenting stockholders to a share in the value of the assets of the association.

One of the respondents suggested that dissenters' rights should be determined in accordance with chapter 13 of the Revised Model Business Corporation Act. Chapter 13 provides that dissenting stockholders are entitled to the fair value of their shares immediately before the effectuation of the corporate action, excluding any appreciation or depreciation in anticipation of the action, unless such exclusion would be inequitable. The fair value of shares can be determined in a number of ways to reflect the price a willing buyer would pay for the shares and the price a willing seller would accept. One prevalent method uses a weighted average of elements of value, including market price, asset valuation, and earnings. In the case of a Farm Credit institution, the institution is not primarily motivated to maximize profit as is a general corporation. Thus, earnings value would not be appropriate in this instance. A consideration of market price is also not relevant because there is generally no determinable market price for Farm Credit institution stock. The net asset value is essentially the share the stock represents in the value of the net assets of the corporation and is based on the hypothetical dissolution and distribution of the corporation's assets. *Fletcher Cyc. Corp.*, Vol. 12B § 5906.12. In addition, it has been held that the value may be based primarily on book value when the corporation has no real earnings or value based on earnings. *Meadows* v. *Bicrodyne Corp.,* 785 F.2d 670 (9th Cir. 1986). In this instance, book value of the assets is not the sole determination; rather, net asset value should be determined by an appraisal to reflect the fair value of the corporation's assets. This net asset value determination is essentially the value that is derived using the calculation method in the proposed regulation.

Another respondent suggested that the value of the dissenters' shares should be determined in accordance with the National Bank Act. That Act provides that an appraisal committee of three persons is chosen by the bank and the dissenting stockholder. The appraisal committee determines a fair cash value or market value by considering the market price of the stock, the established investment value, or the adjusted book value. In response to this comment, the FCA Board believes, as discussed above, that the market price would not serve as a reliable indicator of value for stock of an association because it generally has no determinable market price and is in most cases issued in connection with a loan rather than transferred. The Board notes that investment value is commonly calculated by determining the value of a share in the future earnings of the consolidated bank. This method would be difficult to calculate in that each terminating association may elect to become a different type of financing institution. Also, it would be difficult to calculate an earnings stream for a newly formed commercial bank or other institution. Finally, adjusted book value, as it is defined by the Office of Comptroller of the Currency (OCC), would also not be a reliable indicator because it is determined by multiplying the book value of assets per share by the average market price to book value ratio of comparable banking organizations.

The proposed regulation provides that the price paid to dissenting stockholders is to be determined net of the exit fee calculated in § 611.1240. Deducting the amount of the exit fee prior to calculating the per share value of the dissenters' stock does not entirely follow general corporate law which provides that the value of dissenters' stock should be determined without any appreciation or depreciation as a result of the transaction at issue. However, the Model Business Corporation Act also provides that an adjustment in value based on the transaction may be considered if not doing so would be inequitable. The FCA considered alternatives regarding the impact of the exit fee on the value of dissenters' shares. If the stockholders were entitled to dissent from the termination and receive a value for their shares that was calculated before the exit fee was subtracted there would be an incentive for some stockholders to dissent from the transaction and reinvest all or part of the distribution in the successor institution, thus creating a windfall. The FCA believes that valuing dissenters' shares net of the exit fee is the method least likely to encourage dissent for the purpose of gaining a windfall on the retirement of equities. Also, valuing dissenters' shares net of the exit fee treats dissenting stockholders and stockholders who receive an equity interest in the successor institution equally. The stockholders who do not dissent receive an equity interest in the successor institution that is net of the exit fee paid upon termination. Thus, both parties receive value for their equity interests in the terminating association that is determined by subtracting the exit fee. The FCA believes that this methodology is consistent with one of the primary goals of providing dissenters' rights, which is to ensure that stockholders who dissent from the transaction are treated equitably with those who vote in favor of termination and receive equity interests in the successor institution.

The proposed regulations also specify that, prior to termination, dissenting stockholders shall be paid in cash the lesser of the book value or par value for the stockholder's interest in the association. Any equity interest in excess of the par value of stock would, at the dissenting shareholder's option, be paid in subordinated debt of the successor institution. That subordinated debt could have a maturity sufficiently long to qualify it as capital under some financial regulators' guidelines. The Board felt that this method of payment would permit the dissenting stockholders to be treated fairly, provide assurance that dissenting shareholders would not be forced to own equity in the terminating association, and at the same time reduce the potentially adverse impact on the terminating association. The Board also considered requiring the terminating association make all payments to dissenting stockholders in cash prior to termination. The Board decided not to adopt this approach in the proposed regulations but specifically invites comments on the issue.

The proposed regulation requires that the terminating association include within the notice specified in § 611.1220(e) an explanation of the rights of dissenting stockholders, a statement of the current book and par value per share plus the expected book and market value of the stockholders' pro rata interest in the successor institution, and an explanation of the procedure required to exercise dissenters' rights. The proposed regulation further requires that the terminating association adopt a convenient and easily understandable procedure by which stockholders and holders of participation certificates may exercise dissenters' rights and retire their equity interests. Such procedure should consist of a notification form such as a postcard or preprinted return form and envelope which shall specify the date the form must be returned to the association and include a place for stockholders to indicate that they intend to exercise dissenters' rights. In accordance with general corporate law, the proposed regulation provides that in order to be eligible to exercise dissenters' rights, a stockholder must not vote in favor of the termination, but rather must vote against or abstain from voting on the termination. *Model Business Corporation Act*, 3d Ed., vol. 3 § 13.21 (1984); *Fletcher Cyc. Corp.*, vol. 12B § 5906.7. The proposed regulation requires that dissenting stockholders notify the terminating association within 30 days of the date the notification of dissenters' rights is mailed that they intend to retire their stock or participation certificates. In the event a petition for reconsideration is successful, the stockholders' election to retire stock shall automatically be rescinded.

*Section 611.1266 -- Loan Refinancing by Borrowers*

A majority of the commentors expressed the belief that borrowers of the terminating association must be given the opportunity to continue as borrowers of a Farm Credit institution. However, the commentors asserted that no institution should be required to make a loan to borrowers of the terminating association. The proposed regulation at § 611.1266 assures the borrowers' ability to seek financing for their loans from another Farm Credit institution. The FCA is in agreement with the respondents that no institution should be required to extend credit to any borrower, and the proposed regulation is in accord with this view. The institution chartered to serve the territory of the terminating association, whether on an interim or permanent basis, will use its own credit standards to determine if the borrowers are creditworthy. The proposed regulation requires the institution chartered to serve the territory to provide information to assist borrowers in applying for financing. In addition, it is important that the terminating association facilitate the borrowers' attempts to finance loans with another Farm Credit institution through such means as promptly providing all necessary information to the borrowers and the other institution. The proposed regulation also takes into consideration the nature of the obligation with the Farm Credit Bank and the ease of transferring the obligation from the terminating association to the institution designated to serve the territory, if the institution is willing to acquire the loan.

*Section 611.1270 -- Continuation of Borrower Rights*

The impact of the termination on borrower rights can be determined only on a case-by-case basis. As one commentor noted, some institutions may have incorporated various borrower rights provisions in loan documents in such a way that they have become contractual rights between the parties. In such cases, the proposed regulation at § 611.1270 prohibits the terminating association from requiring that these contractual rights be waived as a condition of continued financing through the successor institution. In other cases, successor institutions may become OFIs and may thus be required to continue borrower rights as directed by the Act. As noted above, § 611.1225 of the proposed regulations requires the terminating association to disclose the impact of termination on borrower rights as part of the information statement provided to all equity holders.

**Lists of Subjects in 12 CFR Part 611**

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

**PART 611 -- ORGANIZATION**

1. The authority citation for part 611 continues to read as set forth below and all other authority citations throughout part 611 are removed.

**Authority:** Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.0, 5.9, 5.10, 5.17, 7.0-7.13, 8.5(e); 12 U.S.C. 2011, 2021, 2071, 2096, 2121, 2142, 2183, 2203, 2221, 2243, 2244, 2252, 2279a-2279f-1, 2279aa-5(e); secs. 411 and 412 of Pub. L. 100-233.

2. Part 611 is amended by adding a new subpart P to read as follows:

**Subpart P -- Termination of Farm Credit Status -- Associations**

Sec.

611.1200 General -- Applicability.

611.1205 Definitions.

611.1210 Advance notification.

611.1211 Filing of termination application.

611.1212 Filing date of termination application.

611.1215 Farm Credit Administration review and approval.

611.1220 Voting record date and stockholder approval.

611.1225 Requirements for information statement.

611.1226 Prohibited acts.

611.1230 Plan of termination.

611.1235 Stockholder reconsideration.

611.1240 Exit fee.

611.1250 Repayment of debts.

611.1255 Retirement of equities owned.

611.1260 Dissenters' rights.

611.1266 Loan refinancing by borrowers.

611.1270 Continuation of borrower rights.

**Subpart P -- Termination of Farm Credit Status -- Associations**

**§ 611.1200 General -- Applicability**

(a) Each association is authorized, in accordance with sections 7.10 and 7.11 of the Act, to terminate the status of the association as a Farm Credit institution. The regulations in this subpart set forth the procedural, disclosure, voting and approval requirements applicable to such termination.

(b) Except as provided in paragraph (c) of this section, these regulations are applicable to an association that seeks to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution. In the event that a receiver or conservator is appointed by the Farm Credit Administration in the case of a voluntary or involuntary liquidation of the association the provisions of subpart L of this part apply, and the provisions of this subpart shall not apply.

(c) These regulations are not applicable to the termination of an association whose capital is in excess of 25 percent of the capital, or whose assets are in excess of 25 percent of the assets, of the bank of which it is a member.

**§ 611.1205 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) *Commencement resolution* means the resolution adopted pursuant to § 611.1210(a) to indicate the commencement of the termination process.

(b) *GAAP* means generally accepted accounting principles, which is that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. GAAP shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated. The application of GAAP in particular circumstances shall be consistent with interpretations of the Farm Credit Administration.

(c) *OFI* means other financing institutions, as that term is defined in § 614.4540(e).

(d) *Reconsideration vote* means the vote at which the voting stockholders reconsider whether to terminate the terminating association's Farm Credit status.

(e) *Successor institution* means the institution to which the terminating association will convert when its Farm Credit charter is revoked.

(f) *Terminating association* means an association seeking to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution.

(g) *Termination resolution* means the resolution adopted pursuant to § 611.1211(a) approving the applications for termination and a new charter and providing for submission of the termination proposal to a stockholder vote.

(h) *Termination vote* means the stockholder vote at which the termination proposal is first submitted to the voting stockholders for their approval or disapproval.

**§ 611.1210 Advance notification.**

(a) An association's board of directors shall commence the process of termination by adopting a commencement resolution indicating the association's intention to terminate its Farm Credit status.

(b) Within 5 days of the adoption of the commencement resolution by the board of directors, the terminating association shall:

(1) Submit a certified copy of the commencement resolution to the Farm Credit Administration; and.

(2) Mail a brief announcement to all holders of equity in the association which states that the board is taking steps to terminate its Farm Credit status and which describes the process of termination, the anticipated effect of termination on current holders of equity, and the type of institution the successor institution will be. If bylaws are adopted in accordance with paragraph (e) of this section, the announcement shall also state that, during the time period up until the termination, new common stock and participation certificates either purchased from the association in connection with a loan or sold to the association prior to the termination will not entitle the holder to receive a share in the net asset value of the association.

(c)(1) Within 15 days after submission of the commencement resolution pursuant to paragraph (b)(1) of this section, the terminating association shall submit to the Farm Credit Administration a statement of its estimation of the exit fee together with an explanation of the computation of the exit fee pursuant to the requirements of § 611.1240. For purposes of this estimate of the exit fee, the computation date set forth in § 611.1240(c) shall be the quarter and preceding the date of the commencement resolution.

(2) Within 45 days of its receipt of the terminating association's estimated exit fee, the Farm Credit Administration shall either confirm the association's estimation of the exit fee or notify the association of any required revisions to the computation.

(3) In the event that the Farm Credit Administration requires adjustments to the estimated exit fee pursuant to paragraph (c)(2) of this section, the terminating association may request reconsideration of any revisions. Such request shall be in writing and shall set forth specific reasons why the revisions should not be made. The Farm Credit Administration shall reconsider the revisions and shall inform the terminating association of its determination within 15 days of the receipt of the reconsideration request.

(d) During the time period after the board of directors' adoption of the commencement resolution pursuant to paragraph (a) of this section and prior to the date of termination, the following conditions shall apply to the terminating association's conduct of business:

(1) Each prospective new borrower shall be informed of the effect of the proposed termination upon the borrower's loan and shall be specifically informed whether the borrower will continue to have any of the borrower rights provided under the Act and regulations promulgated thereunder;

(2) Any common stockholders or participation certificate holders who seek to have such equity interest retired before termination shall be informed that the retirement would extinguish the holder's right to stock in the successor institution if the termination is completed or to dissent from the termination and receive a share of the net assets of the association.

(e) Notwithstanding any provisions of § 615.5230(b) to the contrary, an association may adopt bylaws which provide for the issuance of a special class of voting stock and participation certificates in connection with loans granted during the time period subsequent to the adoption of the commencement resolution and prior to the termination. Such voting stock or participation certificates, which shall be issued in accordance with section 4.3A of the Act, shall have characteristics identical to shares of the existing classes of voting stock or participation certificates issued as a condition of the extension of a loan, except for the following:

(1) In the event of termination, the holder shall be entitled to receive either an equity interest in the successor institution equal to the amount of the purchase price of the stock or participation certificate or, provided that such holder did not vote in favor of termination at the termination vote, a return of the purchase price of the stock;

(2) In the event that the termination does not occur, this special class of stock or participation certificates shall automatically convert into shares of the classes of voting stock or participation certificates issue prior to the adoption of the commencement resolution.

**§ 611.1211 Filing of termination application.**

(a) The board of directors of an association which seeks to terminate its status shall adopt an appropriate termination resolution approving an application for such termination, approving an application for a new charter for the successor institution, and providing for the submission of such termination proposal to its stockholders for a vote.

(b) An original and three copies of a termination application consisting of the following materials shall be submitted by the terminating association to the Farm Credit Administration for review and preliminary approval:

(1) A certified copy of the termination resolution adopted pursuant to paragraph (a) of this section;

(2) A copy of the plan of termination as required under § 611.1230;

(3) An information statement that complies with the requirements of § 611.1225;

(4) All other information that is to be submitted to the stockholders and other equity holders in connection with the contemplated action; and

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

**§ 611.1212 Filing date of termination application.**

(a) Each application shall be reviewed by the Farm Credit Administration and shall be given a filing date. Except as provided in paragraphs (c) and (d) of this section, the date upon which the Farm Credit Administration determines that the termination application is substantially complete shall be the filing date of the application. The filing date shall be a date that is not more than 10 business days after receipt of the application unless the Farm Credit Administration determines within such 10-day period that the application is not substantially complete. If the Farm Credit Administration determines that the application is not substantially complete, the Farm Credit Administration shall notify the terminating association within such 10-day period of any deficiencies identified to that date. While the association is responding to the deficiencies, the Farm Credit Administration shall continue to review the application to determine whether there are any other deficiencies that need to be corrected to make the application substantially complete. Upon correction of all identified deficiencies, the Farm Credit Administration shall give the application a filing date.

(b) A substantially complete termination application consists of the information required to be submitted to the Farm Credit Administration under § 611.1211.

(c) In the event the advance notification required in § 611.1210 is not received by the Farm Credit Administration at least 60 days prior to the filing date of the termination application, the filing date shall be the date that is 60 days following the date on which the terminating association first informs the Farm Credit Administration of the association's intention to terminate its Farm Credit status. During this 60-day period, the Farm Credit Administration shall contact other associations to determine their willingness to provide service to the territory of the terminating association or to determine if there are persons who wish to charter a new association to serve the territory. An inability of the Farm Credit Administration to arrange for a new service provider for the territory shall not be grounds for an extension of the 60-day period. This paragraph shall not apply if the entire chartered territory of the terminating association is already included in the charter of one or more associations that are chartered to offer credit services of the same type as the terminating association.

(d) If the Farm Credit Administration has required any revisions to the terminating association's computation of the estimated exit fee pursuant to § 611.1210(c), the termination application shall not be accepted for filing until the terminating association and the Farm Credit Administration have resolved the differences.

**§ 611.1215 Farm Credit Administration review and approval.**

(a) Upon receipt of a substantially complete termination application, the Farm Credit Administration shall review the application and either disapprove or give its preliminary approval.

(b) The Farm Credit Administration Board shall have 30 days from the filing date, as defined in § 611.1212, to approve or disapprove the termination application. If the Farm Credit Administration Board does not act within such 30-day period, the application is deemed to have preliminary approval.

(c) If the application is denied, written notice specifying the reasons for denial shall be transmitted to the chief executive officer of the association, who shall promptly notify the association's board of directors. If the application is disapproved, it shall not be submitted to the stockholders for a vote.

(d) Upon stockholder approval of the proposed termination as provided in § 611.1220, the secretary of the terminating association shall forward to the Farm Credit Administration a certified record of the results of the stockholder vote and shall notify its stockholders and other equity holders of the results of the vote as provided in § 611.1220(e)

(e) Final approval by the Farm Credit Administration Board shall be conditioned upon the following:

(1) A termination vote in favor of termination and, if a reconsideration vote is held, a reconsideration vote in favor of termination;

(2) Receipt by the Farm Credit Administration of conformed executed copies of all contracts and agreements submitted pursuant to § 611.1230;

(3) Satisfactory evidence of the terminating association's adequate provision for payment of debts and retirement of equities;

(4) Evidence of the grant of a new charter for the successor institution by the appropriate Federal or State chartering authority;

(5) Payment of the exit fee by certified check or other means agreed upon by the Farm Credit Administration and the terminating association; and

(6) The fulfillment of any other condition of termination imposed by the Farm Credit Administration Board.

(f) If no petition for reconsideration is filed with the Farm Credit Administration in accordance with § 611.1235, the Farm Credit Administration shall grant final approval, the terminating association's charter shall be revoked, and the termination shall be effective on the last to occur of --

(1) The proposed termination date of the terminating association;

(2) Ninety (90) days after receipt by the Farm Credit Administration of the notice required to be submitted pursuant to paragraph (d) of this section; and

(3) Receipt of final payment of the exit fee.

**§ 611.1220 Voting record date and stockholder approval.**

(a) Upon receipt of preliminary approval of the termination application by the Farm Credit Administration Board, the association shall call a meeting of its voting stockholders. The stockholders meeting shall be held within 60 days of receipt of preliminary approval from the Farm Credit Administration Board. All holders of equity in the terminating association shall be permitted to attend the meeting. The stockholders eligible to vote shall be the stockholders who are eligible to vote on the voting record date as determined by the association's bylaws if such date is not more than 70 days prior to the stockholder vote, or on a date fixed by the board of directors which shall be not more than 70 days prior to the date of the stockholder vote. The association shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the association's bylaws.

(b) The notice of meeting to consider and act upon the board of directors' resolutions shall be accompanied by an information statement that complies with the requirements of § 611.1225.

(c) (1) The terminating association shall establish voting security procedures which comply with the procedures for the election of directors in § 611.330, as applicable. Specifically, the terminating association shall insure that all information regarding how or whether individual stockholders have voted and all materials such as ballots, proxy ballots, election records, and other relevant documentation related to the votes of stockholders shall be held in strict confidence.

(2) The terminating association may adopt procedures which require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. The terminating association may also use signed proxies or eligibility certificates which will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope.

(3) The terminating association shall use a form of identity code on the ballot enabling it to determine which stockholders are eligible to exercise dissenters' rights and shall require that the votes be tabulated by an independent party who is not a stockholder, director, or officer of the terminating association or the successor institution. When the terminating association receives notification pursuant to § 611.1260 that a stockholder intends to exercise dissenters' rights, the association will verify with the independent party that the stockholder either abstained from voting or voted against the termination. The terminating association shall be informed of the vote a stockholder only in the event that stockholder exercises the right to retire stock in the association in accordance with § 611.1260.

(d) The proposal shall be approved by the stockholders if agreed to by a majority of the eligible voting stockholders of the association voting in person or by proxy at the stockholders' meeting.

(e) Upon approval of a proposed termination by the stockholders of the terminating association, a certified statement showing the results of the stockholder vote shall be forwarded to the Farm Credit Administration within 10 days following the stockholders' meeting. The terminating association shall notify its stockholders and other holders of equity interests of the results of the vote not later than 30 days after the final vote. The terminating association shall further notify stockholders of their right to file a petition for reconsideration in accordance with § 611.1235 and that any petition for reconsideration must be filed on or before a date certain, which shall be 35 days after the date the terminating association mails notice to the stockholders of the results of the stockholder vote.

**§ 611.1255 Requirements for information statement.**

Notice of the meeting to consider and act upon a proposed termination shall be sent to all stockholders and other holders of equity interests and shall be accompanied by an information statement that contains the following information and materials:

(a) A statement on either the first page of the material or the notice of the stockholders' meeting, in capital letters and bold face 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.

(b) A statement on the first page of the material entitled "Executive Summary" and consisting of a concise description of the material changes in rights of the borrowers, stockholders, and holders of other equity interests to occur as a result of the termination, the effect of such changes, and the potential benefits and disadvantages to them of the termination.

(c) A description of the plan of termination as required in § 611.1230.

(d) A statement by the board of directors of the terminating association enumerating the potential benefits and disadvantages of the termination together with the basis for the board's recommendation for termination.

(e) A list of the initial board of directors and senior officers of the successor institution, together with a brief description of the business experience of each such person, including principal occupation and employment, during the past 5 years.

(f) A summary of the provisions of the organizational documents of the successor institution, including the articles of incorporation and bylaws, that differ materially from the charter and bylaws of the terminating association. The summary shall indicate whether the maintenance of a borrowing relationship with the successor institution shall be required as a condition for maintaining a stockholder's interest.

(g) An explanation of any changes in the nature of the stockholders' and other equity holders' investment in the association, including but not limited to any changes in dividends, patronage refunds, voting rights, preferences, retirement of equities, and priority upon liquidation. If any eligible borrower stock is outstanding, such explanation shall include a statement that the guaranty afforded to eligible borrower stock by § 4.9A of the Act shall be extinguished at termination and that stock of the successor institution received in exchange for eligible borrower stock shall not be protected under § 4.9A of the Act.

(h) An explanation of the effect of termination on the rights that borrowers are afforded under the Act; the expiration date of those rights, if applicable, under the provisions of the plan of termination; a statement that borrowers may seek to have their loans transferred to the association(s) that will be chartered to serve the terminating association's territory, or from any other associations that already serve the territory; and an explanation of the procedure for a borrower to apply for a transfer of his loan to the association(s) that will be chartered to service the terminating association's territory, if such designations have been made. The disclosure shall include the name and address of such association(s).

(i) An explanation of the formula and process by which stock of the terminating association will be exchanged for stock of the successor institution.

(j) A description of any agreement or arrangement with any person, including any officers or directors of the terminating association, relating to employment or termination of employment with the terminating association or employment with the successor institution.

(k) An explanation of the computation of the exit fee and the estimated amount of the exit fee.

(l) A statement detailing the nature and type of financial institution that the successor institution will become after termination and the conditions of approval, if any, placed on the successor institution by the State or Federal financial regulatory who will charter the successor institution.

(m) A summary of the differences, if any, between the terminating association and the successor institution with respect to interest rates, interest rate policies, collection policies, services provided, service fees, and any other item of interest that would affect a borrower's lending relationship with the successor institution including whether stockholders will be restricted in any way in their ability to borrow from the successor institution.

(n) A discussion of the expected capital requirements of the successor institution, and the amount and method of capitalization for the successor institution.

(o) An explanation of the sources and manner of funding the operations of the successor institution.

(p) An explanation of the existence of any continuing contingent liability that will not be paid immediately upon termination and the manner in which this liability will be addressed by the successor institution.

(q) A summary of the differences in tax status of the terminating association and the successor institution, and an explanation of the effect of such changes on both the successor institution and the stockholders.

(r) A brief description of the regulatory environment for the successor institution and a summary of the differences from the current regulatory environment that affect the cost of doing business or the value of equity and that are not addressed elsewhere in the information statement.

(s) A statement identifying those stockholders and other holders of equity that are entitled to dissenters' rights and an explanation of those rights as set forth in § 611.1260, including the estimated value of the stock upon distribution, procedures for the exercise of dissenters' rights, and the time period during which such rights may be exercised, and a statement that stockholders who vote in favor of the termination will not receive dissenters' rights.

(t)(1) A presentation of the following financial data:

(i) A balance sheet and income statement for the terminating institution for each of the 2 preceding fiscal years;

(ii) A balance sheet for the terminating institution as of a date within 90 days of the date the termination application is forwarded to the Farm Credit Administration 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 prior fiscal year;

(iv) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the date of the most current balance sheet presented in the statement; and

(v) 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 pursuant to paragraph (t)(1)(iv) of this section.

(2) The format for the balance sheet and income statement shall be the same as is contained in the institution's annual report to stockholders and shall contain appropriate footnote disclosures, including data relating to nonperforming loans and related assets and allowance for losses.

(3) The financial statements shall include either of the following:

(i) A statement signed by the chief executive officer and each member of the board of directors of the terminating association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with GAAP (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 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 terminating association in accordance with GAAP applied on a consistent basis, except as otherwise disclosed therein.

(u) A description of any event subsequent to the date of the financial statements, but prior to the date upon which the termination application is submitted to the Farm Credit Administration, that would have a material impact on the financial condition of the terminating association or the successor institution.

(v) A description of any event subsequent to the submission of the termination application to the Farm Credit Administration that would have a material impact on any information in the termination application.

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

(x) A proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(y) A certification signed by the entire board of directors of the terminating association as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director shall inform the Farm Credit Administration of the reasons for such refusal.

**§ 611.1226 Prohibited acts.**

(a) No terminating association or director, officer, employee or agent thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact concerning the proposed plan of termination to a stockholder of the association in order to influence the outcome of the vote on the proposed termination.

(b) No director, officer, employee, or agent of a terminating association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association's plan of termination constitutes, directly or indirectly, either a recommendation on the merits of the proposal or an assurance concerning the adequacy or accuracy of any information provided to the association's stockholders and other equity holders in connection therewith.

**§ 611.1230 Plan of termination.**

The plan of termination shall include the following information:

(a) Copies of all contracts, agreements and other documents pertaining to the proposed termination and organization of the successor institution.

(b) A statement of the means by which the assets of the terminating association will be transferred to, and its liabilities assumed by, the successor institution.

(c) The terminating association's plan to retire, and the successor institution's plan to issue, equities held by holders of stock, participation certificates, and allocated equities, if any.

(d) A copy of the charter application filed with the appropriate Federal or State chartering authority, together with any exhibits or other supporting information that is submitted to such authority.

(e) A statement whether the successor institution will have a credit relationship with the Farm Credit bank and the effect such status will have on the provision for payment of the terminating association's debts. The plan of termination shall include evidence of the agreement and plan for satisfaction of outstanding debts, whether contained in a general financing agreement or otherwise.

(f) The proposed effective date of the termination.

**§ 611.1235 Stockholder reconsideration**

(a) Eligible voting stockholders have the right to reconsider the approval of the termination provided that --

(1) A petition signed by 15 percent of the eligible voting stockholders of the association is filed with the association, and a copy of such petition is filed with the Farm Credit Administration, within 325 days after the date of mailing of the notification of the final results of the stockholder vote required under § 611.1215; and

(2) Such petition is certified by the terminating association as provided in paragraph (b) of this section.

(b) Each petition shall include the signature, printed name and full address of each voting stockholder signing the petition. Within 5 days of its receipt of a timely filed stockholder petition, the association shall certify whether the signatures on the petition are the signatures of persons who were eligible voting stockholders of the terminating association on the voting record date, and the association shall notify the Farm Credit Administration of such certification.

(c) The petition shall include the name and address of a person who shall serve as petitioners' representative and who shall represent the interests of the petitions in the reconsideration vote process.

(d) If the terminating association certifies that a least 15 percent of eligible voting stockholders have signed the petition, a special stockholders' meeting shall be called by the association to vote on the reconsideration. Such meeting shall be held within 60 days after the date on which the stockholders were notified of the final result of the termination vote. If a majority of stockholders of the association voting in person or by written proxy vote against the termination, the termination is not approved. If a majority of stockholders of the association voting in person or by written proxy do not vote against the termination, the termination shall be effective pursuant to the provisions of § 611.1215(f), but not less than 15 days after the reconsideration vote.

(e) The petitions, through the petitioners' representative, and board of directors of the terminating association shall each have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be reasonable in length and shall be mailed to stockholders and other equity holders along with the notice of stockholders' meeting for the reconsideration vote.

(f) The terminating association shall, at its expense, provide the stockholders initiating the petition with a list of the names and addresses of all of the eligible voting stockholders of the association. All other expenses for the petition shall be borne by the petitioners. Reasonable expenses for the reconsideration vote shall be borne by the terminating association.

**§ 611.1240 Exit fee.**

(a) Definitions. (1) *Assets* means all assets less appropriate valuation reserves as determined in accordance with GAAP except where otherwise noted.

(2) *Contingent liabilities* means those liabilities that, in accordance with GAAP, will materialize if certain events occur.

(3) *Total capital* means all capital stock, surplus and undivided profits accounts as determined in accordance with GAAP, except where otherwise noted, and as adjusted pursuant to the requirements of § 611.1240.

(b) A terminating association shall pay an exit fee equal to the amount by which the total capital of the association exceeds 6 percent of its assets. The exit fee shall be paid to the Farm Credit Assistance Fund if the effective date of termination is prior to January 1, 1992 or to the Farm Credit Insurance Fund if the effective date is after that date.

(c) The computation date for the exist fee shall be the quarter end preceding the filing date. A certified audit of the terminating association shall be performed by a certified public accounting firm as of the computation date. The Farm Credit Administration may, in its complete discretion, waive this requirement if such an audit was performed as of a date within the 6 months preceding the computation date.

(d) The method of computation shall be as follows:

(1) The average daily balance of assets and total capital for the past 12 months preceding the computation date will be computed as a basis for determining the exit fee; and

(2) Account balances shall be computed in accordance with GAAP and adjusted in accordance with paragraph (e) of this section.

(e) For purposes of determining the amount of the exit fee, the Farm Credit Administration will review the terminating association's transactions over a 3-year period prior to the date of the adoption of the termination resolution. If this review determines that the terminating association has an increase in assets unrelated to the association's core business or has retired capital outside the ordinary course of business, the Farm Credit Administration may make adjustments to the association's assets, liabilities, or capital and recompute the exist fee based on these adjustments. The review by the Farm Credit Administration shall include, but not be limited to:

(1) Additions or subtractions to the allowance for loan losses;

(2) Additions to assets outside the terminating association's ordinary course of business;

(3) Dividends or patronage refunds exceeding the terminating association's usual practices;

(4) Changes in the terminating association's capitalization plan or implementation of that plan that increased or decreased the level of borrower investment;

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

(6) Assets that may be undervalued or not recorded on the books of the association.

(f) Capital of the terminating association owned by another Farm Credit institution is not eligible for conversion to stock in the successor institution. Such stock shall be retired or converted to a liability. Stock issued in connection with assistance from the Financial Assistance Corporation shall not be included in capital for the purpose of determining the exit fee.

(g) In the event that GAAP requires that a liability be recorded on the balance sheet that will be offset by an unrecorded asset, the transaction recording the liability shall be reversed.

(h) In the event the terminating association has recorded expenses associated with the termination, such transaction shall be reversed.

(i) The exit fee shall be paid by certified check, or other means agreed upon by the Farm Credit Administration and the terminating association, not later than 5 business days prior to the effective date of the termination.

**§ 611.1250 Repayment of debts.**

(a) The terminating association shall provide for the payment or assumption by the successor institution of all outstanding debt obligations, other than obligations to other Farm Credit institutions.

(b) The terminating association may establish and maintain an OFI relationship with the Farm Credit Bank, subject to part 614, subpart P, of these regulations. The general financing agreement establishing the OFI relationship shall provide for the assumption by the successor institution of any direct loan or other obligation that a production credit association is authorized to incur and that is not repaid at the time of termination. Any part of the direct loan or other obligation that is not linked to a loan covered by the general financing agreement shall be repaid as provided in paragraph (c) of this section.

(c) A terminating association that will not become an OFI shall either repay its direct loan and any other obligations with the Farm Credit Bank upon termination or shall arrange with the Farm Credit Bank to repay the loan over a period which shall not exceed 3 years following termination.

(d) The terminating association shall pay or make provision of payment of obligations to any other Farm Credit institutions under any loss-sharing agreement or other agreement.

**§ 611.1255 Retirement of equities owned.**

(a) The Farm Credit Bank may retire all equities of the Farm Credit Bank that are owned by the terminating association on the termination date or may enter into an agreement with the terminating association which would provide for a phased retirement of the equities. Any such plan for phased retirement shall provide for such retirement to be completed by the earlier to occur of 3 years from the termination date or the date on which the terminating association repays all indebtedness to the bank, provided that no retirement shall occur during that period if any such retirement would result in the Farm Credit Bank's failure to meet minimum capital requirements.

(b) If the Farm Credit Bank and the terminating association are unable to reach agreement regarding the retirement of Farm Credit Bank equities, either institution may send the most recent proposals to the Farm Credit Administration along with an explanation of the points of disagreement. The Farm Credit Administration may require the bank to retire terminating association equities under such conditions as the Farm Credit Administration may require.

(c) No retirement shall occur if the Farm Credit Administration determines that the retirement of equities of the Farm Credit Bank would threaten the viability of the Farm Credit Bank.

(d) The amount to be paid to a terminating association in the retirement of equities owned in the Farm Credit Bank shall be equal to the amount of the allocated equities owned by the terminating association in the Farm Credit Bank, less any impairment, at the date the request for retirement is made by the terminating association. If the Financial Assistance Corporation owns any preferred stock in the Farm Credit Bank, any impairment of bank capital shall be applied first against the value of association owned equities for determining the value of stock to be retired.

(e) If the terminating association has outstanding preferred stock issued to the Financial Assistance Corporation or has received the proceeds of such stock from a Farm Credit Bank, the association shall retire all such investment prior to termination.

**§ 611.1260 Dissenters' rights.**

(a) Dissenting stockholders, at their discretion may, but are not required to, have their stock or participation certificates in the terminating association retired as provided in paragraph (b) of this section. To be eligible to be a dissenting stockholder a person must be the owner, other than a Farm Credit institution, of voting or nonvoting stock or other equities of the terminating association who was either --

(1) Not eligible to vote on the termination resolution; or

(2) Eligible to vote on the termination resolution and did not vote, in person or by proxy, in favor of such resolution.

(b) The terminating association shall pay dissenting stockholders in accordance with the priorities in liquidation set forth in the bylaws of the terminating association. If there is no bylaws provision governing liquidation, such distribution shall be based on the requirements in the capitalization bylaws of the terminating association. Holders of eligible borrower stock shall receive not less than par value for their stock.

(c)(1) Except as provided in paragraph (d) of this section, the price paid to dissenting common stockholders and participation certificate holders shall be the book value at the termination date adjusted to reflect any increase or decrease in asset value resulting from the appraisals required in § 611.1240.

(2) Payments made to dissenting common stockholders referred to in paragraph (c)(1) of this section shall be made on the following basis. If the book value of the common stock is less than or equal to the par or stated value of the stock, the full amount of the payment shall be in cash. If the book value of the common stock is greater than its par or stated value, the association:

(i) Shall pay in cash an amount equal to the par or stated value of the stock; and

(ii) Shall cause or otherwise provide for the successor institution to issue on the date of termination subordinated debt to the stockholders in an amount equal to the amount by which the book value exceeds the par or stated value of the stock. Such subordinated notes shall have a maturity date not in excess of seven years after the date of issuance, shall have a priority on liquidation ahead of all equity shares, and shall carry a rate of interest that shall be not less than the rate for comparable debt issued by the Treasury of the United States plus one percent.

(d) If the association has adopted bylaws in accordance with § 611.1210(e), dissenting stockholders who own common stock or participation certificates issued in accordance with such bylaws shall be paid in cash an amount equal to the lesser of the par or book value of such stock or certificates.

(e) For the purposes of this section, common stock consists of voting stock, nonvoting stock which was formerly voting stock, and stock which has no priority of payment over any other class upon liquidation.

(f) The notice to stockholders and other holders of equity interests required in § 611.1220(e) shall include the following information:

(1) A statement of the rights of dissenting stockholders as specified in paragraph (a) of this section;

(2) The current book and par value per share, and the expected book and market value of the stockholder's pro rata interest in the successor institution; and

(3) An explanation of the procedure by which stockholders may exercise dissenters' rights and the form they shall return to the terminating association informing it of their intent to exercise such rights. The notification form by which stockholders may exercise dissenters' rights shall include the date by which the form must be returned to the terminating association, as specified in paragraph (b) of this section, and a place for stockholders to mark or indicate that they intend to exercise dissenters' rights. The notification form shall be a convenient method for the stockholders to notify the association and may consist of, but is not limited to, a postcard or preprinted return envelope.

(g) Dissenting stockholders shall have until 30 days following notification of their dissenters' rights to request retirement of their stock or participation certificates. The stockholders' election to retire stock will be rescinded if a petition for reconsideration is successful.

(h) Maintenance of a borrowing relationship with the successor institution shall not be required as a condition for owning stock in the successor institution, unless otherwise directed by the bylaws of the successor institution.

**§ 611.1266 Loan refinancing by borrowers.**

(a) Borrowers of the terminating association who do not wish to have their loans transferred to the successor institution may seek to have their loans financed by or through another association chartered to serve the territory of the terminating association.

(b) If an association has been designated to serve the territory of the terminating association prior to the mailing of the information statement, or if an association that offers credit services of the same type as the terminating association is already chartered to serve the territory, such association shall be identified in the information statement. In addition, such association shall provide the terminating association with the following information:

(1) The name and address of the association office that the borrower should contact;

(2) An explanation of the procedures to apply for financing with the association and the procedures by which the loan may be transferred to the association;

(3) An explanation of the stock purchase requirements of the new association; and

(4) Any other information the association wishes to include or routinely provides to new borrowers.

(c) If the terminating association receives the information required in paragraph (b) of this section prior to the mailing of the information statement to borrowers, the terminating association shall either include such information in the information statement or shall provide a list of the names and addresses of its borrowers to the list of the names and addresses of its borrowers to the designated association. If an association has not been designated to serve the territory or if the terminating association does not receive the information required in paragraph (b) of this section prior to the mailing of the information statement, the terminating association shall provide a list of the names and addresses of its borrowers to such association promptly after the Farm Credit Administration notifies it of such designation.

(d) The terminating association shall provide credit and loan information to the association designated to serve the territory upon the borrower's or association's request, in accordance with § § 618.8300 through 618.8325, and take such other steps as are necessary to facilitate the transfer of the loan to the association.

**§ 611.1270 Continuation of borrower rights.**

Terminating associations which maintain an OFI relationship with the Farm Credit bank shall comply with borrower rights provisions contained in part 614, subparts K, L, M and N of these regulations. The terminating association may not require a waiver of applicable borrower rights provisions as a condition of ownership interest in and continued financing by the successor institution.

Dated: July 9, 1990.

**Curtis M. Anderson,**

*Secretary.*

[FR Doc. 90-16321 Filed 7-11-90; 8:45 am]

BILLING CODE 6705-01-M