

# Farm Credit Administration

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## INFORMATIONAL MEMORANDUM



June 1, 2016

To: Chairman, Board of Directors  
Chief Executive Officer  
All Farm Credit System Institutions

From: Gary K. Van Meter, Director  
Office of Regulatory Policy

Subject: Revised Guidelines on Submission of Proposals to Merge or Consolidate Farm Credit System Banks and Merge or Consolidate Farm Credit System Associations

This Informational Memorandum (IM) revises and consolidates two previously issued guidance documents on Farm Credit System (System or FCS) merger requests: “Guidelines on Submission of Proposals to Merge Banks” and “Guidelines for the Submission of Proposals to Merge or Consolidate Farm Credit System Associations” (collectively, Guidelines).<sup>1</sup> Most of the revisions update guidance to reflect the 2015 rulemaking in the area of mergers.<sup>2</sup> The revisions also improve clarity, update terminology, and consolidate like provisions.

The Farm Credit Administration (FCA or Agency) regulations governing requests for approval of proposals to merge or consolidate two or more Farm Credit banks or associations are set forth in 12 CFR part 611, subparts F and G. The FCA issues guidance based on these regulations to help ensure that initial merger requests contain all the information necessary to analyze the preliminary approval request, as well as to facilitate the inclusion of information and disclosures in merger packages sent to voting shareholders that enhance transparency and provide greater clarity on relevant issues of a merger or consolidation.

A summary of the amended provisions and clarifications in the attached guidance are listed in the table below:

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<sup>1</sup> Most recently issued on August 27, 2010, and April 25, 2014, respectively. Banks may also reference BL-063, “Farm Credit System Bank Merger Applications.”

<sup>2</sup> 80 FR 51117 (Aug. 24, 2015).

## NEW PROVISIONS

**Informational Meetings**--The FCA may require that institutions hold informational meetings before a stockholder vote when considered appropriate to the merger request under review. Refer to FCA regulation § 611.1122(d).

**FCA Review Timeframe**--Only after the FCA has determined that all required materials have been received and the proposal, including the related disclosure documents, is complete and ready for FCA review, will the Agency's 60-day statutory review period begin. Refer to FCA regulation § 611.1122(c).

**Disclosures**--The Agency may require merging institutions to distribute additional or corrective disclosures if FCA determines that the disclosures provided to stockholders were incomplete, inaccurate, or misleading. Refer to FCA regulation § 611.1122(i)(2).

**Role of Agents**-- "Agents" and "other parties participating in the affairs of the institution" have been added to the list of those prohibited from making untrue or misleading statements of material fact during mergers and territory transfers. Refer to FCA regulation § 611.1122(i) and 611.1124(j).

**Reconsiderations**--Upon request, eligible stockholders wishing to file a reconsideration petition must be provided the voting record date list used for the stockholder vote on the proposed plan of merger or consolidation within 7 days of the request. Refer to FCA regulation § 611.1126(b).

## CLARIFICATIONS

**Additional Information**--The FCA may request additional information or analysis from institutions at any time during the merger review process. Refer to FCA regulation § 611.1122(c).

**Bank Merger Packages**--Bank merger requirements are the same as those for associations, unless otherwise instructed by the FCA. Refer to FCA regulation § 611.1020(b).

Any questions regarding this Informational Memorandum or revisions to the checklists should be directed to Paul K. Gibbs, Associate Director, Office of Regulatory Policy, at (703) 883-4203 or by email to [gibbsp@fca.gov](mailto:gibbsp@fca.gov), or to Barry Mardock, Deputy Director, Office of Regulatory Policy at (703) 883-4456 or by email to [mardockb@fca.gov](mailto:mardockb@fca.gov).

### Attachments:

- General Information - Requests for FCA Approval of Merger Submissions
- Procedures to Request FCA's Approval of a Merger
- Request for FCA Approval of Institution Mergers Transmittal Sheet
- Documentation Checklist for Preliminary Approval of a Merger
- Information Checklist for Preliminary Approval of a Merger

**General Information**  
**Requests for FCA Approval of Merger Submissions**  
**(Attachment 1)**

Farm Credit banks or associations requesting to merge or consolidate with like institutions (hereafter referred to as “merge”) submit one joint package containing the information required by 12 CFR §§ 611.1020(b), 611.1122 and 611.1123. While information in Tabs 1 to 4 of Attachment 5 is specific to each requesting institution, all other required information should be identical for each constituent institution. However, any differences between the merging institutions should be disclosed to stockholders in accordance with the applicable regulation.

**1. Use of the Checklists**

There are two checklists: the Documentation Checklist (Attachment 4) and the Information Checklist (Attachment 5). In the space provided on the Documentation Checklist, use an "X" to indicate that the material is included under the tab shown. In the space provided on the Information Checklist, indicate the page number or other index number in which the information is presented within the tab. Use "N/A" for any non-applicable items and give a short statement at the end of the information checklist explaining why the item is not applicable.

See the Information Checklist and accompanying detailed instructions for each item.

**2. Terminology**

- a. *ACA parent-subsidiary structure* – refers to an Agricultural Credit Association with two wholly owned subsidiaries: a Production Credit Association (PCA) and a Federal Land Credit Association (FLCA)<sup>3</sup> that operate with a common board of directors and staff with each entity responsible for the debts of the others. For most regulatory purposes, FCA views the ACA and its subsidiaries as a single entity.
- b. *Acquirer* – as defined by generally accepted accounting principles (GAAP), in a business combination, merger, consolidation, etc., refers to the institution that obtains control of the acquiree or is the primary beneficiary of a variable interest entity.
- c. *Acquiree* – in a business combination, merger, consolidation, etc., refers to the institution that the acquirer obtains control of.
- d. *Acquisition method of accounting* – GAAP requires that each business combination be accounted for by applying the acquisition method of accounting. The acquisition method requires:
  - Identification of the acquirer.

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<sup>3</sup> An FLCA is a Federal land bank association that has received a transfer of direct long-term real estate lending authority pursuant to section 7.6 of the Farm Credit Act of 1971, as amended.

- Determination of the acquisition date.
  - Recognition and measurement of identifiable assets acquired and liabilities assumed.
  - Recognition and measurement of goodwill or a gain from a bargain purchase.
- e. *Act* – refers to the Farm Credit Act of 1971, as amended.
- f. *Agreement of Merger* – refers to the written agreement between the merging institutions governing the terms and conditions of the merger transaction. If a consolidation, the agreement should be referenced as the “Agreement of Consolidation.”
- g. *Bargain purchase* – refers to a business combination in which the total acquisition-date fair value of the identifiable net assets acquired exceeds the fair value of the consideration transferred and requires the acquirer to recognize that excess in earnings as a gain attributable to the acquirer.
- h. *Business combination* – refers to a merger or a consolidation of institutions or other event in which an acquirer obtains control of one or more businesses.
- i. *Conditions of Approval* – refers to the conditions imposed by FCA on the proposed merger or consolidation.
- j. *Constituent institutions* – refers to those institutions party to a merger or consolidation request.
- k. *Continuing institution* – refers to the institution, along with any subsidiaries, whose charter continues as a result of the merger.
- l. *Control* – in a business combination, merger, or consolidation, has the meaning of controlling financial interest as defined by GAAP and applicable guidance.
- m. *Fair value* – in a business combination, refers to the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.
- n. *Farm Credit Bank (FCB) or Agricultural Credit Bank (ACB)* – refers to the Farm Credit System bank (funding bank) with which the constituent associations are currently affiliated. The terms “FCB” and “ACB” have the meaning given in 12 CFR §§ 619.9145 and 619.9020, respectively.
- o. *Goodwill* – refers to an asset representing the future economic benefits arising from other assets acquired in a business combination that are not individually identified and separately recognized.

- p. *Merger* – refers to either a merger or a consolidation of institutions, whichever is applicable to the situation, unless otherwise specified. The terms “merger” and “consolidation” have the meaning given in 12 CFR §§ 619.9210 and 619.9110, respectively.
- q. *12 CFR* (e.g., 12 CFR 611.1122) – is a citation of the FCA regulations for mergers of institutions contained in Title 12, Chapter VI, of the Code of Federal Regulations (CFR).
- r. *Subsidiary(ies)* – refers to a PCA subsidiary or an FLCA subsidiary (or both) of an ACA that owns 100 percent of the subsidiary(ies), or to an applicable subsidiary of a bank.

### 3. Rules for Presentation

- a. Organize the documents submitted to the FCA in the same order as listed on the Documentation Checklist. The merging institutions have flexibility to present the documents to stockholders in the order they choose unless otherwise required by regulation.
- b. Present information furnished with a merger request by using appropriate headings to identify the subject matters.

### 4. Submission of Checklists – Include a transmittal sheet, Documentation Checklist, and the Information Checklist with each request sent to the FCA for review of a merger submission.

### 5. Preliminary Approval of a Merger – The minimum requirements for seeking FCA’s preliminary approval of a merger request are:

- a. The submission to FCA of those documents listed in the Documentation Checklist and all information specified in the Information Checklist in accordance with instructions;
- b. Disclosures to stockholders are adequate, i.e., no misrepresentation of facts and no statements that would mislead stockholders;
- c. The merger agreement contains no provisions that would result in unsafe or unsound operations;
- d. The financial forecast of the continuing institution (submitted under Tab 22 and for FCA’s use only) demonstrates that the continuing institution is capable of generating a positive income flow sufficient to maintain its capital at a level that is determined adequate based on statutory and regulatory requirements, as well as the capital targets set by the institution’s board; and

- e. The effectiveness and competency of the continuing institution's board and management have been demonstrated based on compliance with FCA regulations and as determined by the FCA through its examination, monitoring, and oversight processes.

The FCA may require additional information as it deems appropriate for consideration of a merger request.

In addition, when planning the effective date of a proposed merger and the timing of the submission of a merger request, institutions should consider the FCA review timeline, as well as the possibility of the FCA requiring stockholder informational meetings when considered appropriate by the FCA to the merger or consolidation request under review.

- 6. Update to Financial Statements – If you wish to include your most recent quarterly financial statements in the disclosure document to stockholders after receiving the FCA's preliminary approval, submit the updated statements and all related disclosure materials to the FCA for review before issuing them to shareholders.
- 7. Director and Employee Representations – Pursuant to 12 CFR 611.1122(i)(1), no director, officer, employee, agents or other parties participating in the affairs of an FCS institution may make an oral or written representation to any person that a preliminary or final approval by the FCA of a merger constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any institution's stockholders in connection therewith.

## **Procedures to Request FCA's Approval of a Merger or Consolidation (Attachment 2)**

Pursuant to 12 CFR 611.1122(f), if a proposed merger or consolidation will involve three or more institutions, the FCA may require additional information or waive the information required under 12 CFR 611.1122(f). Obtain a waiver of this or any other regulation from FCA before preparing the shareholder notice required by 12 CFR 611.1122(e).

### **Preliminary Approval**

1. The constituent institutions should send six complete copies of the proposal (one original and five copies), including all materials contained in the disclosure document provided to shareholders, and additional documents to FCA. The copies will be for FCA use only. Where applicable, include the approval of the proposal by the funding bank(s), along with a cover letter signed by the constituent institutions or the constituent institutions' merger or consolidation coordinator, to:
 

The Farm Credit Administration  
 Secretary to the Board  
 1501 Farm Credit Drive  
 McLean, VA 22102-5090
2. After the FCA has determined that all required materials have been received and the disclosure document is complete and ready for FCA's Office of Regulatory Policy management review, the FCA will notify the chief executive officer(s) of the constituent institutions when the Agency's 60-day statutory review period began.<sup>4</sup> Generally, a complete package will include all items identified in the Documentation Checklist unless the item(s) are not applicable to the proposal. Explain all nonapplicable items under the Explanatory Notes area of Section B, located at the end of the Information Checklist. The FCA may also request additional information during the review process. No assumption is to be made regarding the completion of the application, as FCA will notify the constituent institutions when an application is considered completed pursuant to 12 CFR 611.1122(c). In addition, institutions should make no assumption on preliminary approval of the proposal until the FCA issues its written preliminary decision.
3. The FCA will issue written notice of either its denial or preliminary approval of the merger request and send the notice to the chairman of the board of directors of each constituent institution. Any disapproval of a merger proposal by the FCA Board will state the reasons the proposal was rejected. When applicable, copies of the notice will be sent to the funding bank(s).
- 4a. On written notification that the FCA Board has given preliminary approval for the merger,

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<sup>4</sup> Pursuant to § 611.1122(c).

the constituent institutions may proceed with submitting the proposal to merger, along with the disclosure documents, to their stockholders for a vote. However, institutions are reminded that the FCA may require, when circumstances warrant it, the constituent institutions to hold informational meetings before a stockholder vote on the planned merger.

- 4b. On written notification that the FCA Board has denied the merger, the constituent institutions may resubmit the proposal after resolving the reasons for the initial disapproval of the merger.

### **Final Approval**

If the majority of each constituent institution's stockholders casting a vote have voted to approve the merger, submit one set of the following documents to the FCA along with the request for final approval:

1. An Agreement of Merger (or Agreement of Consolidation) with the inked signatures of those persons authorized to sign such agreement.
2. A certified copy of the stockholders' resolution on the Agreement of Merger and a certified statement from the independent third party(s) used to tally the votes that a quorum was present at a duly authorized stockholders' meeting and that the merger was approved. Specify within the certification the quorum requirement for each constituent institution, a tally of the results of the vote, and the number of voting stockholders who were eligible to vote as of the voting record date.
3. The original charters of the non-continuing constituent institutions being merged or consolidated (including the charters of subsidiary institutions, if any).

**ASSOCIATIONS ONLY:** Two sets of the Articles of Incorporation (ACA, PCA) or Articles of Association (FLCA) with inked signatures for the continuing association if the action will result in issuance of a new charter (e.g., a consolidation of like associations or merger of unlike associations).

4. Two copies of the printed stockholder disclosure document as mailed by each constituent institution to its stockholders (including the notice to stockholders, proxy instructions, proxy authorization, proxy ballot, and ballot for casting a vote at the stockholders' meeting).
5. A copy of the dated notification of the voting results as mailed by each constituent institution to its stockholders.
6. A cover letter from each of the constituent institutions' CEOs requesting final approval and with a final recommendation on the effective date of the merger. The effective date of a



merger may not be less than 35 days after the date notification was mailed to inform stockholders of the results of the stockholder vote or 15 days after the date of submission to the FCA of all required documents for the Agency's consideration of final approval, whichever occurs later. During the 35-day period following the mailing of the notice to stockholders, a petition for reconsideration can be filed by voting stockholders as specified in 12 CFR 611.1126. In cases where stockholders file a reconsideration petition, a second effective date is required that is not less than 60 days after stockholder notification of the results of the first vote or 15 days after the date of the reconsideration vote, whichever occurs later.

7. Any other documents that may be required by the FCA in its preliminary approval letter, such as evidence of satisfaction of any other conditions or requirements for final approval as stated in the preliminary approval letter.

The FCA will send written notice of the final FCA approval decision to the institutions and, when appropriate, provide a copy to the affiliated funding bank(s). If a valid petition for reconsideration is received by the FCA, the FCA will withhold final approval consideration until the reconsideration process is completed. If the merger receives final FCA approval, charters or charter amendments will follow the approval letter.

**Transmittal Sheet**  
**Request for FCA Approval of Institution Mergers or Consolidation**  
**(Attachment 3)**

Bank Affiliation or Districts, as applicable:

Coordinator's Name:

Coordinator's Address:

Coordinator's Telephone Number:

Coordinator's E-Mail Address:

Coordinator's Fax Number:

**FINANCIAL FORECASTS' COORDINATOR (if different than above)**

Coordinator's Name:

Coordinator's Address:

Coordinator's Telephone Number:

Coordinator's E-Mail Address:

Coordinator's Fax Number:

**INFORMATION ON CONSTITUENT INSTITUTIONS**

Institution Name:

CEO Name:

Mailing Address:

Telephone Number:

E-Mail Address:

Fax Number:

Board Chairman:

Home Address (if preferred):

Institution Name:

CEO Name:

Mailing Address:

Telephone Number:

E-Mail Address:

Fax Number:

Board Chairman:

Home Address (if preferred):

Proposed legal name of continuing institution and, if applicable, its subsidiaries:

Designated Headquarters location (City/County/State):

Name of CEO of continuing institution:

Date of approval of merger by funding bank (if applicable):

Date of request to FCA for preliminary approval:

Proposed dates of stockholders' meetings:

Proposed effective date of merger:

Does the proposed territory of the continuing institution include any new territory of an institution that is not a party to the merger, but has the authority to offer the same types of credit and related services?

Yes:

No:

If yes, have the affected institutions been notified of the proposed merger?

Yes:

No:

If yes, include a copy of notification under TAB 26.

If notification has been provided, identify the affected institutions and counties involved:

Include a map showing the resulting territory and any overchartered areas under Tab 7, item 25.b.

Do any of the constituent institutions have any other requests pending action by the FCA Board as of the date this proposal was submitted?

Yes:

No:

If yes, please specify nature of request and date it was submitted to FCA:

Identify the number of voting stockholders in each constituent institution as of the date of the most recent interim financial statements included with the merger proposal. These numbers should agree with information provided in each constituent institution's most recent Call Report – Schedule RC-K.

	Institution A	Institution B	Institution C
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Number of voting stockholders:			
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**Documentation Checklist**  
**Preliminary Approval of a Merger or Consolidation**  
**(Attachment 4)**

Name of Continuing Institution

**Section A – Disclosure to Stockholders**

Use "X" or N/A TAB

1. Notice of stockholders' meetings and the FCA disclaimer statement
2. Proxy instructions, proxy authorization, and ballot
3. Boards of directors' statements
4. Statement of advantages and disadvantages of merger
5. Summary of tax matters
6. Summary of provisions of the agreement of merger
7. Agreement of merger and exhibits
  - a. Exhibit 1 – Bylaws—continuing institution and, as applicable, its subsidiaries
  - b. Exhibit 2 – Charter/Map of territory
  - c. Exhibit 3 – Articles of Incorporation for any new ACA or PCA and Articles of Association for any new FLCA (**ASSOCIATION ONLY**)
  - d. Exhibit 4 – Capital accounts
8. Summary of charter and bylaw changes
9. Interest rates of merging institutions
10. Summary of the general financing agreement
11. Proposed loan pricing and fee policies of the continuing institution
12. Accounting policy for high-risk loans and loan-related assets
13. Annual reports of constituent institutions
14. Interim financial statements of constituent institutions
15. Pro forma financial statements of continuing institution
16. Relationship with qualified public accountant
17. Other significant matters

**Section B – Additional Documents (for FCA Use Only)**

18. Certified resolutions from boards of directors
19. Approval of funding bank, with supporting analysis (**ASSOCIATION ONLY**)
20. Management capabilities of the continuing institution
21. Credit quality statistics and loan-related assets
22. Three-year financial forecast
23. Information systems merger plan
24. Administrative or supervisory actions
25. Any requested waivers of applicable regulations

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Use "X" or N/A

26. Additional information or documents, including acquirer letter on the treatment of the merger or consolidation
27. CEO certification
28. Letter of inclusion from qualified public accountant
29. Checklists—completed documentation checklist and information

**Information Checklist  
Preliminary Approval of a Merger  
(Attachment 5)**

(Name of Continuing Institution)

**SECTION A – DISCLOSURE TO STOCKHOLDERS**

**TAB 1. NOTICE OF STOCKHOLDERS’ MEETINGS AND FCA DISCLAIMER STATEMENT – Each constituent institution is required by 12 CFR 611.1122(e) to furnish a notice of meeting to its respective stockholders. The contents of the notice are:**

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1. The date, time, and place of the stockholders’ meeting.
2. The board resolution or board-approved action that is to be considered and voted on by stockholders, including stockholder approval of the capitalization bylaws as a part of the merger agreement or as a separate event to be considered and voted on by stockholders.
3. The requirements for stockholder approval, as identified in 12 CFR 611.1122(d).
4. A list of attached documents and any supplemental disclosure material that is not enclosed but is available upon request. Provide instructions within the notice on how to obtain these supplemental materials, including the address, telephone number, and name or title of the employee or officer whom stockholders should contact for the information. If a waiver from FCA is requested under 12 CFR 611.1122(f), include a statement that the individual financial statements of the other constituent institutions are available upon request.
5. Reference to the proxy, proxy authorization, and instructions included in the material and provide the deadline for receipt of the proxy authorization and ballot by the independent third party tabulating the voting results.
6. The disclaimer required by 12 CFR 611.1122(e)(1), using capital letters and bold face typeface. Locate the disclaimer at the bottom of the notice of meeting or on the first page of the disclosure material.
7. Instructions to stockholders not eligible to vote, including preferred stockholders, on how to obtain disclosure materials. These nonvoting stockholders should receive notice of the meeting. However, participation certificate holders with active loans are to receive all material provided to voting stockholders.

**TAB 2. PROXY INSTRUCTIONS, PROXY AUTHORIZATION, AND BALLOT – Voting stockholders are permitted to vote in person or by proxy, using the voting procedures of 12 CFR 611.340. Include in proxy instructions the following information:**

Page #/ Index #

1. Stockholders may designate someone other than the named director(s) to serve as proxy, provided that the person designated is a voting stockholder of that institution and attends the meeting.
2. Stockholders may revoke a proxy at any time prior to when ballots are cast at the stockholders' meeting. Explain how to revoke a proxy or where to obtain information on revoking proxies.
3. Stockholders are not to sign the ballot. Explain if identity codes will be used.

Proxy instructions are to be on separate paper(s) from the proxy authorization and ballot.

**TAB 3. BOARD OF DIRECTORS' STATEMENT(s) – As required by 12 CFR 611.1122 (e)(4), include a statement addressed to the stockholders from the boards of directors of the constituent institutions (either jointly or in separate statements) that discusses the following:**

1. The basis for each board's recommendation to stockholders on the proposed merger, including the background and reasons for the merger, key decisions by any oversight group or steering committee, and the board's assessment of the compatibility of the merger partners and the significance to the merger of any key areas in which the institutions are not compatible.
2. The objectives of the proposed merger and the goals of the continuing institution.
3. Each board of director's opinion on the conclusions of the due diligence review performed by the institution.
4. Each board should discuss why a merger was considered, how they were involved in the process, and the facts and circumstances that caused them to recommend stockholder approval of the merger. The discussion should be transparent and include, but not be limited to, the following facts and circumstances, as applicable for the merger:
  - Why each board believes the continuing institution board will further reflect the marketplace.
  - Include details of how each board expects stockholders to directly benefit from the merger or consolidation.
  - How each board believes the merger or consolidation will enhance safety and soundness.



5. **ASSOCIATION ONLY:** The discussion should also include, but not be limited to, the following facts and circumstances, as applicable to the merger:
  - Explain why each board believes the merger will improve the institution's capacity to meet its mission, including how the continuing institution will be inclusive to all eligible, creditworthy current or potential borrowers, and how it will continue to serve its young, beginning, and small farmers;
  - How the board will interact with stockholders going forward, how the stockholders will be heard and represented, and how the board intends to stay abreast of stockholder concerns and communicate with and provide outreach to stockholders; and
  - How each board envisions the continuing institution will maintain or strengthen its presence in the constituent institutions' communities.
6. **BANK ONLY:** The continuing bank's credit and risk management philosophies and how these philosophies will affect the bank's relationship with its affiliated associations and, in turn, the affiliated associations' delivery of credit and related services to borrowers.

**TAB 4. STATEMENT OF ADVANTAGES AND DISADVANTAGES OF THE MERGER** – The statement of advantages and disadvantages of the merger should provide justification for all statements that project future financial results, such as changes in operating costs, increased efficiency, stock retirements, fee income, interest rates, or earnings. The statements should specifically address areas or issues that would be relevant to or influence the decision of each constituent institution's stockholders, either separately or jointly, and should address the significant advantages and disadvantages. For example, recognizing that an advantage to one institution may be a disadvantage to the other constituent institution and explain as necessary. Also, identify those advantages that may not be realized because they are subject to external forces outside the control of management; such as, changes in any of the following that could be an advantage or a disadvantage:

- Territory size;
- Board representation;
- Responsiveness to customer needs;
- Interest rate risk management;
- Organizational efficiencies or economies of scale;
- Changes in personnel and staffing reductions;
- Headquarters location;
- Funding;
- Earning ability;
- Interest rates;
- Loan pricing policy;
- Dividend payment and patronage refund policies;
- Purchase stock retirement and allocated equity redemption policy;

- Required stock requirements;
- Capital adequacy assessment
- Risk diversification;
- Cost savings;
- Managerial responsibilities versus capabilities;
- Income tax considerations;
- Changes in loan portfolio management, loan underwriting, and credit risk appetite;
- Relationship and communications with its funding bank or affiliated associations, as applicable;
- Integration of management and operating systems;
- Information processing compatibilities and integration; and
- Three-year Internal audit program and current internal audit plan.

The statements should address each institution's assessment of any other challenges that may affect the continuing institution or its stockholders and describe how the continuing institution intends to address or mitigate those challenges, such as the challenges identified by the boards of directors as discussed in Tab 3.

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1. Advantages (e.g., how will the merger benefits stockholders);
2. Disadvantages (e.g., how will the merger increase risk to stockholders); and
3. Discuss any of the following that may be an advantage or a disadvantage of the merger or have material impact or risk:
  - Identification and penetration of all market segments;
  - Level of technical assistance to stockholders (e.g., business plans, marketing, training, etc.); and
  - Portfolio risk diversification (or concentration);
4. **ASSOCIATION ONLY:** Other material impacts or risks of the merger.
  - Enhanced outreach activities; and
  - Branch office locations.

**TAB 5. SUMMARY OF TAX MATTERS – Furnish the following information to stockholders and indicate whether or not a legal opinion or ruling on the tax effects of the proposed merger is to be obtained:**

1. A statement with respect to possible federal and state income tax consequences of the merger to the constituent institutions and the continuing institution.

2. A discussion of any change in the tax status of the continuing institution, including its subsidiaries, if any, from those of the constituent institutions as a result of the proposed merger, pursuant to 12 CFR 611.1122(e)(14).
3. A statement of any adverse tax consequences to the stockholders of the constituent institutions as a result of the change in tax status, pursuant to 12 CFR 611.1122(e)(14).

Reference should be made to the pertinent sections of the Agreement of Merger if a legal opinion or ruling on tax effects of the merger is obtained (see Tab 7.20).

**TAB 6. SUMMARY OF PROVISIONS OF THE AGREEMENT OF MERGER – Summarize the significant provisions of the merger agreement (detailed under Tab 7) as required by 12 CFR 611.1122(e)(2) and, at a minimum, include the following:**

1. The immediate effect on the continuing institution on the effective date of the action, for example, cancellation of charter and ceasing of the identity of an individual institution and any subsidiaries, as well as the issuance of an amended or new charter, succession rights and conversion of equity.
2. Location of headquarters, branch and other offices, as applicable.
3. Provisions of the capital adequacy plan for the continuing institution.
4. Board composition and size upon merger, including the effect of combining or possibly reducing the size of the board of directors, as well as disclosing the number of outside directors and any other appointed directors of the board of the continuing institution.
5. Accounting basis (acquisition method) for the merger; identification of the acquirer and acquiree.
6. Bases on which the merger agreement can be terminated.
7. The Conditions of Approval imposed by FCA on the continuing institution.
8. A summary of stockholders' reconsideration rights as contained in 12 CFR 611.1126.
9. Personnel matters – effect on employees, including changes in management, senior officers and the combining or possible reduction of staff; and any plan or agreement relating to employment or termination of employment or any changes to employees' benefits plan.
10. Other changes that will accompany the merger (e.g., change in territory to be served, any changes to capitalization requirements, other operating functions, or accounting systems, such as integration of accounting systems, data processing and other operations, as well as a change in tax status).

**TAB 7. AGREEMENT OF MERGER – Furnish information on the merger agreement executed under 12 CFR 611.1123 and clearly label the information presented in the agreement as follows:**

Page #/ Index #

1. PREAMBLE – List the names and addresses of the institutions that are party to the merger agreement, summarize the conditions leading to the merger agreement, and state that the boards of directors of the merging institutions and the funding bank (if applicable) have approved the agreement, and if the FCA has preliminarily approved the merger.
2. PROPOSED EFFECTIVE DATE – State the proposed effective date of the merger.
3. NAME AND HEADQUARTERS LOCATION – State the name and headquarters of the continuing institution.
4. DESCRIPTION OF TERRITORY – Identify the territory to be served by the continuing institution.
5. EXCHANGE OF STOCK – Furnish a statement on the outstanding shares of capital stock and participation certificates of each constituent institution as of the date of the most recent interim financial statements. Include the formula to be used to exchange stock of the constituent institutions for stock of the continuing institution, when applicable. State the book value of each constituent institution's stock as of the date of the most recent interim financial statements and the value of the continuing institution's stock as if the merger had occurred as of that date. If there is a significant change (+/- 5 percent) in the amount of stock to be exchanged between the date of the most recent interim statements and the previous month-end prior to the date of submission to the FCA, use the data from the previous month-end time period.
6. EQUITY ACCOUNTS – Describe the effects of the transaction on the equity accounts of the constituent institutions and the continuing institution, including any allocated and unallocated surplus accounts.
7. **BANK ONLY:** FUNDING – Provide for the continuance of debt issuance by the continuing bank through the Federal Farm Credit Banks Funding Corporation (Funding Corporation) by adoption of new resolutions by the initial board of directors and amendment of existing agreements or execution of new agreements with the Funding Corporation. Identify any new sources of funding that may be used by the continuing bank.
8. ACCOUNTING FOR THE MERGER – State that the merger will be accounted for using the acquisition method of accounting for business combinations in accordance with GAAP and describe the effects of the accounting treatment.
9. RESTRICTION ON PAYMENT OF DIVIDENDS –
  - a. **ASSOCIATION ONLY:** Include a statement that no dividends are to be paid on the stock or participation certificates of the constituent institutions from the time of execution of the merger agreement by such parties until the final effective date of the merger.

- b. **BANK ONLY:** Provide the terms of any plan by which any dividends are to be paid on the stock or participation certificates of the constituent banks between the date the merger is agreed to in principle through the proposed effective date of the merger.

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10. EXPENSES OF THE MERGER – Describe how the expenses connected with the merger are to be borne by the constituent institutions or by the continuing institution following the effective date of the merger.
11. CAPITAL ADEQUACY PLAN –
  - a. **ASSOCIATION ONLY:** Provide the capital adequacy plan for the continuing association prepared under 12 CFR 611.1123(a)(9) and 615.5200(b). Explain that the capital plan will be supported by capitalization bylaws, which will only take effect upon approval of the majority of voting stockholders of each constituent association voting in person or by proxy at a duly authorized stockholders' meeting at which a quorum is present. The merger agreement should specify that the approval of the voting stockholders of the constituent associations for any subsequent changes to the parent ACA's capitalization bylaws and the subsidiary associations' capitalization bylaws is required.
  - b. **BANK ONLY:** Provide the capital adequacy plan for the continuing bank prepared under 12 CFR 611.1123(a)(9) and 615.5200(b). Explain that the plan will be supported by capitalization bylaws, which will only take effect upon approval of the majority of voting stockholders of each constituent bank voting in accordance with the bylaws at a duly authorized stockholders' meeting.
12. NOMINATING COMMITTEE – Include a provision for the initial nominating committee of the continuing institution.
13. INITIAL BOARD OF DIRECTORS – Furnish information on the *initial* board of directors as provided in 12 CFR 611.1123(a)(3). Pursuant to 12 CFR 611.210(a)(2), the initial board must have a board-designated financial expert. Pursuant to 12 CFR 611.220(a)(2), stockholder-elected directors must comprise at least 60 percent of the initial board.
14. PERMANENT BOARD OF DIRECTORS – Describe the plan for the *permanent* board of the continuing institution. The plan should include the method to be used to achieve staggered terms and the selection of the outside director(s). Verify that the agreement regarding directors' terms is contained in the bylaws. The permanent board must have a board-designated financial expert as required by 12 CFR 611.210(a)(2). Stockholder-elected directors must comprise at least 60 percent of the permanent board under 12 CFR 611.220(a)(2).
15. ADOPTION OF BYLAWS – Information on the initial board of directors of the continuing institution adopting the bylaws, as amended, at the board's first organizational meeting.

16. CONDITIONS TO BE MET PRIOR TO EFFECTIVE DATE – Discuss any conditions of merger to be satisfied.
17. RECONSIDERATION BY STOCKHOLDERS – Furnish the following information to stockholders:
  - a. Stockholders have the right to reconsider the merger if a petition is signed by 15 percent of the voting stockholders of one or more of the constituent institutions and is filed with FCA within 35 days after the date of mailing of the notification of the stockholder vote;
  - b. Upon request, eligible stockholders wishing to file a reconsideration petition will be provided the voting record date list used for the stockholder vote on the proposed merger within 7 days of the request;
  - c. Petitions successfully filed with FCA may result in a special stockholders' meeting being called by each constituent institution to reconsider the merger vote.
  - d. If a petition is filed, the effective date of the merger is automatically postponed and a second effective date is developed under 12 CFR 611.1122(g)(1).
18. REPRESENTATIONS OR WARRANTIES – Explain any representations or warranties made by the parties under 12 CFR 611.1123(a)(6).
19. OFFICERS AND EMPLOYEES – Identify the chief executive officer and persons named to senior officer positions or disclose the date by which the senior officers will be named. Describe any plan or agreement relating to employment or termination of employment of any of the constituent Institutions' employees, and provisions regarding the employee benefits plan required by 12 CFR 611.1122(e)(5) and 611.1123(a)(10).
20. LEGAL OPINIONS OR RULINGS – Furnish a description of any legal opinions or rulings, including those related to tax matters, if any, that have been obtained or furnished by any party in connection with the proposed merger or merger transactions as required by 12 CFR 611.1123(a)(8). If such opinions or rulings are conditions precedent to the merger, so state. Also, see Tab 5 for disclosure of tax matters.
21. AUTHORITY TO CARRY OUT TERMS OF THE AGREEMENT AND EXECUTE DOCUMENTS – Furnish a statement as required by 12 CFR 611.1123(a)(11).
22. TERMINATION OF MERGER AGREEMENT BY AN INSTITUTION BOARD – Furnish a statement that meets the requirements of 12 CFR 611.1123(a)(7).
23. EXECUTION OF AGREEMENT AND SIGNATURES – Furnish a concluding section on the execution of the agreement, with signature blocks for board chairmen and those officers authorized to sign the agreement, signature blocks for attesting officials, and space for date of execution and the corporate seals of the merging institutions.
24. AMENDMENT PROVISION – Furnish a statement on how constituent institutions will approve changes or modifications to the merger agreement.

25. EXHIBITS – Include the following exhibits as part of the agreement:

- a. New/amended bylaws for the continuing institution meeting the requirements of 12 CFR 611.1123(a)(3), 611.1123(b) and 615.5230. If the capitalization bylaws of any subsidiary institution are being amended or if any other material amendment is being made to the bylaws of the subsidiary, include the bylaws of the subsidiary institution as well.
  - 1) If amendments to the capitalization bylaws remove the right of stockholders to cumulate their votes in the election of directors, ensure that the institution has obtained the approval of the voting stockholders pursuant to 12 CFR 615.5230(a)(1) and (3). Verify that any changes to the capitalization bylaws, other than technical amendments not affecting substantive rights of stockholders, do not become effective unless approved by the voting stockholders voting in person or by proxy at a duly authorized stockholders' meeting. If preferred stock will be issued, make sure the capitalization bylaws are approved by the majority of the shares voting of each class of equities adversely affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote.
  - 2) Institutions have the discretion to include the provisions of section 4.3A of the Act in their capitalization bylaws. The following is a summary of the provisions:

The Farm Credit Reform Act of 1996 amended section 4.3A of the Act so that, as a general rule, borrowers are no longer required to purchase voting stock or participation certificates from System institutions for loans that are designated for sale to a secondary market. Section 4.3A(f) of the Act authorizes System institutions to provide in their capitalization bylaws that loans made on or after February 10, 1996, which are designated for sale into a secondary market, do not require the borrower to purchase voting stock or participation certificates. However, an exception to this provision states that if a loan is not sold into a secondary market during the 180-day period that begins on the date of its designation for sale, the voting stock or participation certificate purchase requirement that would otherwise apply to the loan in the absence of a bylaw provision (as summarized here) shall be effective. The exception also states that, if such a loan is sold into a secondary market after the end of the 180-day period, all outstanding voting stock or participation certificates held by the borrowers with respect to the loan shall be retired as long as the System institution is meeting its minimum regulatory capital adequacy requirements. For loans made before February 10, 1996, which are designated for sale into a secondary market, the outstanding stock or participation certificates held by the

borrower shall be retired, as long as the System institution is meeting its minimum regulatory capital adequacy requirements.

- 3) **ASSOCIATION ONLY:** Ensure the bylaws provide that the funding bank has no approval authority in the corporate governance of the continuing association other than that mandated by law.
- 4) Identify the bylaw provision stating the institution does not indemnify, nor purchase or maintain insurance to indemnify, any person against expenses, penalties, or other payments incurred as a result of an administrative proceeding or action instituted by the FCA, which results in a final order assessing civil money penalties personally against such individual or individuals, or requiring affirmative action by such individual or individuals to make payments to the institution.
- 5) Identify the bylaw provision stating whether a director may serve or is prohibited from serving simultaneously as (1) a director of another System institution, or (2) a director, officer, or employee of another financial institution that is authorized to make the same types of loans that may be obtained through the continuing institution. The board of directors cannot determine on a case-by-case basis whether a director can serve simultaneously. **ASSOCIATION ONLY:** Exception: Directors of the continuing association may also serve on the boards of that association's subsidiaries.
- 6) Identify the bylaw provision stating that an outside director will be automatically removed if he or she becomes a director, officer, employee, agent, or stockholder of a System institution (**ASSOCIATION ONLY:** With the exception for a director of an association of being an outside director of that association's subsidiaries). Also, ensure the outside director(s) has the same term of office as stockholder-elected directors.

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b. New/amended charters for the continuing institution.

- 1) **ASSOCIATION ONLY:** The charter for a new association (if the request is for a merger of unlike associations or a consolidation of like or unlike associations) or amendment to charter for a continuing association. The exhibit should also include the new charters or amended charters of the continuing association's subsidiaries, and include a map of the continuing association's proposed territory.
- 2) **BANK ONLY:** The amendment to the charter for the continuing bank. Also, include a map of the continuing bank's proposed territory.



- c. **ASSOCIATION ONLY:** Two signed copies of any new association's Articles of Incorporation/Association, pursuant to 12 CFR 611.1122(a)(5).
- d. A schedule that identifies, in separate categories, the amounts of at-risk and protected stock and participation certificates, preferred stock, allocated surplus, and unallocated surplus of each constituent institution as of the date used for the most recent interim financial statements under Tab 14.
- e. **BANK ONLY:** As applicable, identify the provision in the bylaws stating that each affiliated stockholder association of an FCB has only one vote that is assigned a weight proportional to the number of an association's voting shareholders; or that each voting stockholder of an ACB has only one vote, unless another voting arrangement has been approved by the FCA.
- f. Pursuant to 12 CFR 611.310(a), identify the provision in the bylaws stating that a director cannot serve if he/she is or has been a salaried officer or employee of any System bank or association within one year preceding the date the term of office on the institution's board begins.
- g. Pursuant to 12 CFR 611.310(b), identify the provision in the bylaws stating that no institution director is eligible to continue to serve in that capacity-- and his or her office shall become vacant-- if, after election as a board member, he or she becomes legally incompetent or is convicted of any criminal offense involving dishonesty or breach of trust or held liable in damages for fraud.
- h. Provide the name of each member on the initial board of directors or their possible successors if the term of a designated initial board member may expire prior to the proposed effective date of merger.

**TAB 8. SUMMARY OF THE CHARTER AND BYLAW CHANGES – Furnish the following, and any other pertinent information:**

1. A summary of the provisions of the continuing institution's charter that differ materially from those of the constituent institutions.
2. A summary of the significant differences between the continuing institution's bylaws and those of the constituent institutions.

3. **ASSOCIATION ONLY:** Pursuant to 12 CFR 615.5230(b), if the association's chartered territory is to be apportioned by region for nominating and electing directors, include a map to show the regions, including the number of voting stockholders in each region. State that cumulative voting is not allowed with regional elections.
4. State whether the capitalization bylaws prohibit stockholders from cumulating their votes pursuant to 12 CFR 615.5230(a)(1) and (a)(3).

**TAB 9. INTEREST RATES OF MERGING INSTITUTIONS – Furnish the following information on interest rates:**

1. **ASSOCIATION ONLY:** Interest rate comparisons of the rates charged by each constituent institution for the 2 years preceding the date of the interim balance sheet provided in Tab 14.
2. **BANK ONLY:** Interest rate comparisons of the rates charged by each constituent bank to its affiliated direct lender associations, other financing institutions, and any direct borrowers for the 2 years preceding the date of the interim balance sheet. Describe any differential rate program that the constituent banks had in effect.

**TAB 10. SUMMARY OF THE GENERAL FINANCING AGREEMENT – Describe the general financing agreements (GFA).**

1. **ASSOCIATION ONLY:** Summarize how the continuing association and its subsidiaries will obtain their funding from the funding bank. Also, summarize any material differences between the existing GFAs of the constituent associations and the funding bank and the anticipated GFA between the continuing association and the funding bank.
2. **BANK ONLY:** Summarize the GFA between the continuing bank and its affiliated associations, including any material differences between the existing GFAs in each constituent bank's district and the proposed GFAs. State the formula for the calculation of lending limits for mortgage loans and commercial loans.

**TAB 11. PROPOSED LOAN PRICING AND FEE POLICIES OF THE CONTINUING INSTITUTION – Describe the proposed policies for loan pricing and loan or loan-related fee programs.**

1. **ASSOCIATION ONLY:** Summarize the proposed policies for loan pricing and discounting, differential rate programs, loan participations, interest rate and loan or loan-related fee programs, interest collection policy, capitalization rates, dividends, and patronage policies of the continuing association, and any other factors that would affect the borrowers' cost of doing business with the continuing association.

2. **BANK ONLY:** Summarize the proposed policies for transfer loan pricing and discounting, differential rate programs, loan participations, interest collection policy, capitalization rates, dividends, and patronage policies of the continuing bank, sale of mortgage loans by the continuing bank to direct lender associations, and any other factors that would affect the borrowers' cost of doing business with the continuing bank.

Describe the bank's policy on fee-based services to direct lender associations and those services which will be included in the direct loan rate to its affiliated associations.

Describe the interest rate risk management policy and how it will be administered.

**TAB 12. ACCOUNTING POLICY FOR HIGH-RISK LOANS AND LOAN RELATED ASSETS AND STATISTICS**

**– Furnish the following information in furtherance of 12 CFR 611.1122(e)(9) and 621.10:**

1. Describe the policy on performance categories and other property owned and provide the definitions of high-risk loan categories of each constituent institutions and the continuing institution.
2. Furnish the number and dollar amount of loans in all high-risk loan categories (nonaccrual, formally restructured, loans 90 days past due still accruing interest, other property owned) for each constituent institution as of the date used for the most recent interim statements and the past 2 fiscal year-ends.

**TAB 13. ANNUAL REPORT OF EACH CONSTITUENT INSTITUTION –**

1. Include a full copy of each institution's most recent annual report with the report certification and the opinion of the qualified public accountant, include the information listed in 12 CFR 611.1122(e)(6), (7), (8), and (11).

**TAB 14. INTERIM FINANCIAL STATEMENTS** – Interim financial statements are required by 12 CFR 611.1122(e)(6) if the merger request is made 90 days after the most recent fiscal year-end of the constituent institutions.

1. Each institution is encouraged to make its request on a date that permits it to use its most recent quarterly report. Interim financial statements should use the same presentation format required for quarterly reports in 12 CFR 620.11 and the same certification required by 12 CFR 620.3.

**TAB 15. PRO FORMA FINANCIAL INFORMATION** – Furnish pro forma financial information required by 12 CFR 611.1122(e)(16) for the continuing institution and as more fully described

**below by applying the acquisition method of accounting which requires:**

- Identification of the accounting acquirer.
- Determining the acquisition date, which is the date the acquirer obtains control of the acquiree. For System institutions, the acquisition date will generally be the effective date of the merger.
- Recognizing and measuring the identifiable assets acquired and the liabilities assumed from the acquiree at their acquisition date fair values.
- Recognizing and measuring goodwill or a gain from a bargain purchase.

The presentation of pro forma financial information is intended to present the effects of the merger on the historical financial statements as if the merger had been consummated at an earlier date and to illustrate the change in the continuing institution's financial position and results of operations as a result of the merger.

The pro forma presentation is intended to provide full and transparent disclosure of:

- The accounting acquirer to the transaction and the facts and circumstances that led to the identification of the acquirer.
- The effects of applying the acquisition method of accounting to the identifiable assets acquired and liabilities assumed, and the assumptions and methods used to determine the acquisition-date fair values.
- Any goodwill or gain from a bargain purchase that may be recognized upon consummation of the merger.

## PRO FORMA FINANCIAL INFORMATION

Pro forma financial information should include pro forma balance sheets, pro forma statements of income and accompanying footnote disclosures. The pro forma financial information should be presented in a columnar format and include the institutions' historical financial statements, any anticipated pro forma financial adjustments, and the combined adjusted pro forma financial information (see format example below). Adjustments to the pro forma balance sheets should be as of the date of the balance sheet presented. Adjustments to the pro forma statements of income should be made as of the beginning of the period presented. Adjustments should be directly related to the business combination transactions, should be factually supportable and—regarding adjustments to the income statement—should have a continuing impact on the continuing institution. Each adjustment should be referenced to a footnote discussion that clearly describes each individual adjustment. The discussion should, at a minimum, include the reason(s) for each adjustment, the method used to determine each adjustment (as applicable), and the assumptions used.

1. Present the pro forma balance sheets as if the merger had occurred at the end of the most recent fiscal year-end and the most recent interim period (12 CFR 611.1122(e)(6)).

2. Present the pro forma statements of income for the most recent fiscal year-end and for the most recent interim period presented (12 CFR 611.1122(e)(6)).
3. The accompanying footnote disclosures should, at a minimum, include:
  - A description of the transaction.
  - The accounting for the transaction.
  - What the pro forma information represents.
  - The institutions to be merged.
  - The periods involved.
  - How the accounting acquirer was identified.
  - How fair value was determined.
  - Intangible assets identified.
  - How goodwill or bargain purchase was determined.
  - Any other disclosure pertinent to a clear understanding of the transaction and its effects.
4. Discuss events subsequent to the date of the financial statements, but prior to the merger vote, that would have material impact on the financial condition of the constituent or continuing institution(s), pursuant to 12 CFR 611.1122(e)(19).
5. Certify the pro forma financial statements in accordance with the certification required by 12 CFR 620.3.

	<u>Institution A</u> (1)	<u>Institution B</u> (1)	<u>Adjustments</u>		<u>As Adjusted</u>
			<u>DR</u>	<u>CR</u>	<u>Pro Forma (4)</u>
Assets (2)					
Cash	XXXX	XXXX	XXXX		XXXX
Loans	XXXX	XXXX	XXXX	(3) -	XXXX
Accrued Interest	XXXX	XXXX	XXXX		XXXX
Investments	XXXX	XXXX	XXXX	(3) -	XXXX
Equipment	XXXX	XXXX	XXXX		XXXX
Intangible Assets	-	-	XXXX	(3) -	XXXX
Goodwill	-	-	XXXX	(3) -	XXXX
Total Assets	XXXX	XXXX	XXXX	XXXX	XXXX
Liabilities (2)					
Notes Payable	XXXX	XXXX	-	XXXX	XXXX
Accrued Interest	XXXX	XXXX	-	-	XXXX
Other Liabilities	XXXX	XXXX	-	XXXX	XXXX
Total Liabilities	XXXX	XXXX	-	XXXX	XXXX
Equity (2)					
Stock	XXXX	XXXX	-	XXXX	XXXX
Allocated Surplus	XXXX	XXXX	-	-	XXXX
Unallocated Surplus			-	XXXX	XXXX
AOCI	XXXX	XXXX	-	-	XXXX
Total Equity	XXXX	XXXX	-	XXXX	XXXX
Total Liabilities And Equity	XXXX	XXXX	-	XXXX	XXXX

- (1) The dollar amount of assets, liabilities, and equity reported in the columns for Institution A and Institution B are presented at amounts reported in the historical balance sheet.
- (2) The assets, liabilities, and equity line items presented are not all-inclusive of items that may be presented and are representative only.
- (3) Each individual adjustment should be referenced to a footnote disclosure that discusses the reason for the adjustment and the assumptions and methods used to determine the amount of the adjustment. If there is more than one adjustment per line item, each adjustment within a line item should be presented individually.
- (4) The As Adjusted Pro Forma column is calculated as the historical amounts for Institution A and Institution B and the adjustments.

## **TAB 16. RELATIONSHIP WITH A QUALIFIED PUBLIC ACCOUNTANT –**

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1. Furnish a statement on the continuing institution's relationship with a qualified public accountant, including any change that may occur as a result of the merger, pursuant to 12 CFR 611.1122(e)(15). If the qualified public accountant has performed any work related to, or provided any assistance with, the preparation of the pro forma financial information presented in the shareholder disclosure document, include a statement from the audit committee that it has determined that the work performed or assistance provided by the qualified public accountant will not impair its independence in the performance of the audit of the financial statements of the continuing institution.

## **TAB 17. OTHER SIGNIFICANT MATTERS –**

1. Furnish information pursuant to 12 CFR 611.1122(a)(7), (e)(20), and (i) as to any other material facts or circumstances that a stockholder would need in order to make an informed decision on the merger proposal or that is necessary to make the required disclosures not misleading. A constituent institution operating under an FCA enforcement action would need to disclose this information and the reason for the enforcement action.
2. **BANK ONLY:** If not addressed in another section of the merger proposal (provide references if addressed in another section), bank merger proposals should clearly and fully disclose in this tab the information required by FCA's Bookletter, BL-063, "Farm Credit System Bank Merger Applications."
  - a. Size Concentration Risk
    - 1) Include an analysis of the size concentration risk being borne by the other banks, the System as a whole, and by investors in Systemwide debt obligations.
    - 2) Identify needed risk mitigating controls to address size concentration risk.
  - b. Business Model Compatibility
    - 1) Identify and analyze the risks posed by business model incompatibilities between the bank and its shareholder associations to the long-term financial and operating success of the continuing bank, and provide practical approaches for addressing them.
  - c. Intra-System Operational Risk
    - 1) Assess the impact that the merger may have on representation in various System-wide decision-making and coordination bodies within the System.

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- 2) Identify any needed enhancements or new measures that ensure long-term cooperation across the System.

d. Other

- 1) Document that the constituent banks have encouraged and considered the input and views of their shareholders and all System bank management and boards of directors and their shareholders.



## SECTION B – ADDITIONAL DOCUMENTS

Section B contains additional information that should be submitted to FCA when seeking FCA preliminary approval of a merger. Disclosure of Section B information (excluding the financial forecast in Tab 22) to stockholders is optional.

**TAB 18. CERTIFIED RESOLUTION FROM EACH BOARD OF DIRECTORS – Furnish the certified board resolution from each constituent institution required under 12 CFR 611.1122(a)(3). The resolution should contain the following information:**

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1. Describe each board's position on approving the merger.
2. Identify the constituent institutions to the merger.
3. Include a statement that each board authorizes pursuing a merger under the Act, applicable regulations, and in accordance with the terms and conditions of an agreement of merger.
4. Authorize and direct officers to perform any and all actions under the Act and applicable regulations to carry out the intent and purpose of each board's resolution and to convene the necessary stockholders' meeting.
5. Designation of an officer to sign the agreement of merger and to obtain the regulatory approvals to effectuate the merger after stockholders have approved it.
6. A certification by each board or corporate secretary or assistant secretary with an inked signature, the signatory's title, the date of the board's resolution, and the date it was certified.

**TAB 19. ASSOCIATION ONLY: APPROVAL OF FUNDING BANK – Furnish the funding bank's approval document (and any supporting analysis) obtained under 12 CFR 611.1122(b). At a minimum, the funding bank's approval documents should address the following questions:**

1. What are the reasons for the bank's approval of the proposed merger?
2. What analyses were performed by the bank to determine the implications of the risk exposures of the merged entity on the bank? Please provide a summary or copy of the relevant risk and credit analysis performed by the bank.
3. Provide the bank's conclusions as to the risk dynamics it has identified and their effect on the district as a result of this merger.
4. Explain any concerns the bank had relative to how the continuing association may perform, both from a financial perspective, a management perspective, and operationally.
5. Will the merger affect the GFA, such as requiring the merged entity to hold more capital or other types of covenants or restrictions?

6. Did the bank analyze how it would work through the risks attendant to the merged entity's size if the direct note to the merged entity became a distressed loan (e.g., a nonaccrual loan)? If so, what were its conclusions and what are the bank's options for addressing such a distressed situation?
7. Are there any other issues or risks that the bank considered and addressed that are not noted above? If so, what were they and how were any potential adverse effects mitigated?

**TAB 20. MANAGEMENT CAPABILITIES OF THE CONTINUING INSTITUTION – Provide the following information:**

1. Identify officer positions that have been filled and the persons selected for these positions. Identify any officer positions that remain vacant and estimate the date by which they are expected to be filled. Provide professional biographical information on the persons named to fill these positions.
2. Assess management's ability to carry out the continuing institution's business plan, to achieve the stated merger goals, and to meet the stated cost savings objectives. Each board of directors is asked to provide its own separate and independent assessment to the FCA.
3. Describe the management structure in place for the transition period between the date the merger is agreed to in principle and prior to the merger effective date. Provide an organization chart for this purpose. List anticipated staffing levels for each major department in the continuing institution.
4. Identify any limitations on the interim board of directors' authorities to act during the period between the date the merger is agreed to in principle and the effective date of merger.

**TAB 21. CREDIT QUALITY AND LOAN-RELATED ASSETS –**

1. **ASSOCIATION ONLY:** Furnish credit quality information (percentages and amounts) of all loans and loan-related assets for each constituent association based on the most recent internal credit review conducted by each association or the most recent credit review by the funding bank. State the source and date of the credit quality information provided.
2. **BANK ONLY:** Furnish credit quality information (percentages and amounts) of all loans and loan-related assets for each constituent bank and breakdown by separate categories (e.g., direct lenders, direct borrowers, other financing institutions) based on the most recent internal credit review conducted by each bank. State the source and date of the credit quality information provided.

## **TAB 22. FINANCIAL FORECASTS FOR THE CONTINUING INSTITUTION –**

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1. The financial forecast should be prepared using the constituent institutions' most recent financial forecasts. If any subsequent events, including the merger, would have a material effect on the continuing institution's financial forecast, then make appropriate adjustments and describe the adjustments made. If no material adjustments were made to the most recent financial forecasts, disclose that fact as a part of the information provided.
2. The forecasts should be for the periods indicated below and should demonstrate how the continuing institution would obtain its forecasted level of permanent capital and meet the minimum permanent capital requirements (e.g., through accumulation of earnings, contributions by stockholders, or preferred stock issuances). **ASSOCIATION ONLY:** Also disclose in the forecast how bank-distributed equities will be allocated between the bank and the continuing association.
3. The forecasts filed as an Excel™ spreadsheet file under this tab are for limited use by the FCA only. Institutions should prepare a limited-use financial forecast so the presentation of such forecasts meets the following minimum requirements:
  - Three-year prospective financial statements, i.e., balance sheet and income statement, for the continuing institution. Cover at least 3 years in the forecast of future operations.
  - Year-to-date and updated forecast through the end of the current year.
  - Pro forma financial information for the prior year as if the merger had been in effect as of the prior year-end.
  - Regulatory capital ratios for the 3-year forecast period, including a detailed calculation of permanent capital and risk-adjusted assets for each year of the forecast period, including the computation of the capital ratios.
  - A pro forma breakdown of the capital items included in Common Equity Tier 1, Additional Tier 1, Tier 1, Tier 2 capital, and Total regulatory capital for the 3-year forecast period.<sup>5</sup> (Institution A, Institution B, and Combined)
  - Summaries of the significant assumptions (and the basis for each assumption) used to develop the financial forecast. These assumptions should include as a minimum: Loan growth rate, average cost of debt, average loan interest rate, noninterest expenses, nonaccrual/gross loan item rate, net charge-offs, total patronage and cash patronage. The bases for the assumptions should be reasonable and realistic. Financial assumptions may be disclosed in a printout Word document, PDF document or Excel™ spreadsheet(s). The FCA may require additional information to support the forecast or "what if" scenarios, e.g., the best and the worst case, as necessary.

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<sup>5</sup> These ratios become effective January 1, 2017, and will be reported beginning March 31, 2017.

Please refer to Appendix 1 of this checklist for guidance on the amount of detail to be provided in the limited-use financial forecast for FCA.

4. To the extent that these requirements have not been met by the material already filed in support of the merger proposal, provide a 3-year business plan for the continuing institution meeting the requirements of 12 CFR 618.8440.

#### **TAB 23. INFORMATION SYSTEMS MERGER PLAN –**

1. Provide an information systems merger plan that addresses how the separate automated information systems will be combined, and how such plan provides for possible implementation or reconciliation problems.

#### **TAB 24. ADMINISTRATIVE OR SUPERVISORY ACTIONS –**

1. Indicate whether any constituent institution has an FCA administrative, supervisory order or enforcement document currently in effect. An institution under FCA special supervision would need to so state in this tab.

#### **TAB 25. WAIVERS –**

1. If applicable, enclose a copy of the letter to the FCA requesting a waiver of financial disclosures available under 12 CFR 611.1122(f). The letter should have been sent prior to the submission of the merger proposal and related disclosure document to the FCA.

#### **TAB 26. ADDITIONAL INFORMATION AND DOCUMENTS –**

1. Provide any additional information or documents that each constituent institution wishes to submit.

For the institution that is determined to be the accounting acquirer include in this Tab 26 a letter from the institution that addresses the following:

- The accounting method that will be used to account for the merger transaction, and the basis in GAAP for the accounting treatment.
- A summary of the accounting issues considered by management including, but not limited to:
  - How it was determined that the merger would be accounted for as a business combination subject to the acquisition method of accounting as determined by GAAP.
  - How it determined the accounting acquirer.

- The methods and related assumptions that will be used to determine the fair value of the assets acquired and liabilities assumed, including the definition of “market participants” and how determined.
  - The intangible assets that will be recognized upon consummation of the merger, the business reasons for management’s determination, and the method used to value the intangible assets. If management has determined that no intangible assets will be recognized, discuss the rationale and support for that determination.
  - The method used to measure goodwill, support for the method used, and the analysis to support recognition and measurement. Discuss the method that will be used to test goodwill for impairment in future periods. If it is estimated that goodwill is immaterial and will not be recognized upon consummation of the transaction, state that fact in the letter and provide support for the determination.
  - Clearly explain all equity account adjustments, and include support as appropriate.
- Management’s overall conclusion on the proposed accounting for the merger transaction and the presentation of the pro forma financial information in accordance with the proposed accounting.
  - Verify that the contents of the letter and the proposed accounting treatment were reviewed and approved by the audit committee. The letter should contain a statement to that fact and indicate the date of approval, or a statement why the audit committee did not approve the proposed accounting treatment, as applicable.
  - Concurrence from the national office of the qualified public accountant that will audit the financial statements of the continuing institution should be obtained. The letter should include the names, titles, departments, and office locations of the qualified public accountants concurring with the proposed accounting, and their individual roles in determining concurrence. A copy of the letter should be sent to each accountant involved in the concurrence, and the letter should indicate that each individual was copied.
  - The letter should be dated and signed by the same signatories as required by 12 CFR 620.3.

If applicable, include a copy of the notice sent to all other Farm Credit institutions that share chartered territory with the merging institutions (Proposed Merger Notice to Overchartered Institutions).

**TAB 27. CEO CERTIFICATION –**

Page #/ Index #

1. Furnish a certification signed and dated by the CEO of each constituent institution as to the truth and accuracy of all financial documents submitted, in accordance with 12 CFR 620.3(c). Provide an updated certification after all revisions to the proposed financial disclosures are made upon completion of FCA staff review and comments.

**TAB 28. LETTER OF INCLUSION FROM QUALIFIED PUBLIC ACCOUNTANT –**

1. A manually signed and dated consent of the qualified public accountant to the use of the qualified public accountant's opinion included in the shareholder disclosure document.

**TAB 29. CHECKLISTS –**

1. Indicate the page number or other index number where the information is presented (or N/A" for any nonapplicable items) in the space provided. Return the completed documentation and information checklists to FCA when submitting your merger proposal.

## APPENDIX I (ASSOCIATION ONLY)

### CHECKLIST FOR ANALYSIS OF FINANCIAL FORECASTS

Please include the below data in the financial forecast whenever available and applicable. A minimum of 3 years of financial forecasts for future operations of the proposed continuing association are required. Any other significant items unique to the association that would aid the analyst in evaluating the financial forecasts.

All data provided should be obtained or derived from the Call Report.

<b>Interest Rates</b>
Average Yield on Earning Assets
Average Cost of Interest Bearing Liabilities
<b>Selected Balance Sheet Items</b>
Accrual Loans
Nonaccrual Loans
Allowance for Loan Losses
Net Loans
Total Assets
Total Liabilities
Total Capital
<b>Income Statement &amp; Other Indicators</b>
Net Interest Income
Noninterest Income
Provision for Loan Losses
Net Charge-Offs
Operating Expense
Net Income
Patronage Paid
<b>Key Financial Ratios</b>
Adverse Assets % of Risk Funds
Criticized Assets to Risk Funds
Nonaccruals % of Gross Loan Items
Nonaccruals % of Risk Funds
Allowance % of Nonaccrual Loans
Patronage % of Net Income
Permanent Capital Ratio
Total Surplus Ratio <sup>6</sup>
Core Surplus Ratio <sup>6</sup>

<sup>6</sup> This ratio will be reported in the call report through December 31, 2016, and cease after that date. This will change the Call Report items related to capital referenced in this Appendix. Ratios submitted in the financial forecast should be up to date with the current Call Reporting fields when the Agreement of Merger is submitted to FCA.

Common Equity Tier 1 ( CET1) capital ratio <sup>7</sup>
Tier 1 capital ratio <sup>7</sup>
Total capital ratio <sup>7</sup>
Tier 1 leverage ratio <sup>7</sup>
URE and URE equivalent leverage ratio <sup>7</sup>
Return on Average Assets
Net Interest Margin
Efficiency Ratio

**Any other significant items unique to the association that would aid the analyst in evaluating the financial forecasts.**

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<sup>7</sup> This regulatory capital ratio becomes effective January 1, 2017, but will be reported beginning March 31, 2017.



## APPENDIX II (BANK ONLY)

### CHECKLIST FOR ANALYSIS OF FINANCIAL FORECASTS

Each of the items below should be included with the financial forecast whenever available and applicable. A minimum of 3 years data by quarterly periods in each year of financial forecasts for future operations of the proposed continuing bank are required. All data provided should be obtained or derived from the Call Report. Note that specific Call Report references are subject to change with periodic Call Report revisions.<sup>8</sup>

<b>Interest Rates</b>
Average Cost of Interest Bearing Liabilities
Average Lending Rate Assumptions
Average Yield on Earning Assets
<b>Selected Balance Sheet Items</b>
Accrual Loans
Adverse Assets
AgriBusiness Loans
Allocated Surplus
Allowance Factors and Assumptions
Allowance for Loan Losses
Association Direct Loans
Common Stock
Criticized Assets
Detailed Calculation of Permanent Capital and Risk Adjust Assets
Interest Bearing Liabilities
Investment in Other FC Institutions
Marketable Investments
Net Loans
Nonaccrual Loans
Other Assets
Other Liabilities
Permanent Capital
Risk Funds
Systemwide Bonds and Notes
Total Assets
Total Capital
Total Liabilities
Total Loans
Unallocated Retained Earnings
Unallocated Surplus

<sup>8</sup> Call Report changes are expected to be in effect by March 2017, which will reflect the Basel III capital rule. This may change the schedule and line number in this Appendix. Items submitted in the financial forecast should be up to date with the current Call Reporting fields when the Agreement of Merger is submitted to FCA.

<b>Income Statement &amp; Other Indicators</b>
FCS Insurance Premiums Income Taxes Interest Expense Net Charge-Offs Net Income Net Income Before Taxes Net Interest Income Noninterest Income Operating Expense Other Income Patronage Paid Provision for Loan Losses
<b>Key Financial Ratios</b>
Adverse Assets % of Risk Funds Allowance % of Nonaccrual Loans CIPA Score Core Surplus Ratio <sup>9</sup> Criticized Assets to Risk Funds Efficiency Ratio Net Collateral Ratio <sup>9</sup> Net Interest Margin Nonaccruals % of Gross Loan Items Nonaccruals % of Risk Funds Operating Expense Rate Operating Expense Ratio Patronage % of Net Income Permanent Capital Ratio Common Equity Tier 1 (CET1) capital ratio <sup>10</sup> Tier 1 capital ratio <sup>10</sup> Total Capital ratio <sup>10</sup> Tier 1 leverage ratio <sup>10</sup> URE and URE equivalents leverage ratio <sup>10</sup> Return on Assets Return on Average Assets Return on Common Equity Total Surplus Ratio <sup>9</sup>
<b>Discuss Assumptions for the following Variables:</b>
Adverse and Criticized Assets Allowance Charge-off rate

<sup>9</sup> This ratio will be reported through December 31, 2016, and cease after that date.

<sup>10</sup> This ratio becomes effective January 1, 2017, and will be reported beginning March 31, 2017.

Interest rate assumptions (income and expense rates) and spread
Loan Growth Rate
Nonaccrual Loans or Rate
Patronage
Provision for Loan Losses

**Any other significant items unique to the bank that would aid the analyst in evaluating the financial forecasts.**

**ADDITIONAL DOCUMENTS**

Explanatory Notes