

## Farm Credit Administration

## § 611.1240

the date of the statements, present fairly the financial position of the institution in conformity with GAAP applied on a consistent basis, except as otherwise disclosed.

(24) *Subsequent financial events.* Describe any event after the date of the financial statements, but before the date you send the plan of termination to us, that would have a material impact on your financial condition or the condition of the successor institution.

(25) *Other subsequent events.* Describe any event after you send the plan of termination to us that could have a material impact on any information in the plan of termination.

(26) *Other material disclosures.* Describe any other material fact or circumstance that a stockholder would need to know to make an informed decision on the termination, or that is necessary to make the disclosures not misleading. We may require you to disclose any assessments, analyses, studies, or rulings we require under § 611.1211.

(27) *Ballot and proxy.* Include a ballot and proxy, with instructions on the purpose and authority for their use, and the proper method for the stockholder to sign the proxy.

(28) *Board of directors certification.* Include a certification signed by the entire board of directors as to the truth, accuracy, and completeness of the information contained in the plan of termination. If any director refuses to sign the certification, the director must inform us of the reasons for refusing.

(29) *Directors' statements.* You must include statements, if any, by directors regarding the proposed termination.

(d) *Requirement to provide updated information.* After you send us the plan of termination, you must immediately send us:

(1) Any material change to information in the plan of termination, including financial information, that occurs between the date you file the plan of termination and the termination date;

(2) Copies of any additional written information on the termination that you have given or give to current or prospective equity holders before termination; and

(3) A description of any subsequent event(s) that could have a material impact on any information in the plan of termination or on the termination.

### § 611.1230 FCA review and approval—plan of termination.

(a) *FCA review period.* No later than 60 days after we receive the plan of termination, we will review it and either approve or disapprove the plan for submission to your equity holders. If we take no action on the plan of termination within the 60 days, you may submit the plan to your equity holders. The 60-day review period under section 7.11 of the Act will begin on the date we receive a complete plan of termination. We will advise you in writing when the 60-day period begins.

(b) *FCA approval of the plan of termination.* Our approval of the plan of termination for submission to your equity holders:

(1) Is not our approval of the termination; and

(2) May be subject to any condition we impose.

### § 611.1235 Plan of termination—distribution.

(a) *Reaffirmation resolution.* Not more than 14 days before mailing the plan of termination to your equity holders, your board of directors must adopt a resolution reaffirming support of the termination. A certified copy of the resolution must be sent to us and must accompany the plan of termination when it is distributed to stockholders.

(b) *Notice of meeting and distribution of plan.* You must provide all equity holders with a notice of meeting and the plan of termination at least 45 days before the stockholder vote. You must also provide a copy of the plan to us when you provide it to your equity holders.

### § 611.1240 Voting record date and stockholder approval.

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

**§611.1245**

**12 CFR Ch. VI (1-1-08 Edition)**

least 60 days after the end of our approval period).

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

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

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

(e) *Voting procedures.* The voting procedures must comply with §§611.330 and 611.340. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

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

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

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

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

**§611.1245 Stockholder reconsideration.**

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

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

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

**§611.1246 Filing of termination application and its contents.**

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

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

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

(2) A certification signed by the board of directors that the board continues to support the termination,