

## Farm Credit Administration

## §611.1260

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

(ii) Subtract from your assets and liabilities your direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination or at termination.

(iii) Subtract from your assets the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### §611.1260 Payment of debts and assessments—terminating association.

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

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

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

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

(c) *Obligations to other Farm Credit institutions.* You must pay or make adequate provision for payment of obligations to any Farm Credit institution (other than your affiliated bank) under any loss-sharing or other agreement.

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

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

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

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

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

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

**§ 611.1270 Repayment of obligations—terminating bank.**

(a) *General rule.* If your institution is a terminating bank, you must pay or

make adequate provision for the payment of all outstanding debt obligations, and provide for your responsibility for any probable contingent liabilities identified.

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

(c) *Satisfaction of joint and several liability and liability for interest on individual obligations.*

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

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