

§611.1280

unallocated surplus, to the new affiliated bank. Calculate the association's share before deduction of the exit fee as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date) in accordance with the liquidation provisions of your bylaws, unless we determine that the liquidation provisions would result in an inequitable distribution. If we make such a determination, we will require you to distribute the association's share of your unallocated surplus in accordance with another method that we deem equitable to stockholders. Before you distribute any unallocated surplus, you must make the following adjustments to stockholder equity as stated in the financial statements as of the month end preceding the reaffiliation date (or the termination date if it is the same as the reaffiliation date):

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

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

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

§611.1280 Dissenting stockholders' rights.

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

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

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

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

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

(c) *Value of a dissenting stockholder's interest.* You must pay a dissenting stockholder according to the liquidation provision in your bylaws, except

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that you must pay at least par or face value for eligible borrower stock (as defined in section 4.9A(d)(2) of the Act). If we determine that the liquidation provision is inequitable to stockholders, we will require you to calculate their share in accordance with another formula that we deem equitable.

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

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

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

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

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

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

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

(i) Pay cash;

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

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

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

(g) *Notice to equity holders.* The notice to equity holders required in

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§ 611.1240(e) must include a form for stockholders to send back to you, stating their intention to exercise dissenters' rights. The notice must contain the following information:

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

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

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

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

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

§ 611.1285 Loan refinancing by borrowers.

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

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

§ 611.1290 Continuation of borrower rights.

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

[67 FR 17909, Apr. 12, 2002, as amended at 69 FR 10906, Mar. 9, 2004]

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

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

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

Subpart A—Standards of Conduct

§ 612.2130 Definitions.

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

(a) *Agent* means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System