

July 13, 2006



FCA Final Rule – Termination of System Status

On January 11, 2006, FCA published a proposal to update existing regulations under which a Farm Credit System bank or association may terminate its System charter and become a financial institution under another Federal or State chartering authority. The final rule was approved by the FCA Board at the July 13 Board meeting and includes the following provisions.

Ensures Sufficient Time and Information for FCA, Institution Board, and Stockholder Deliberations. The final rule separates FCA's review of a terminating institution's disclosure information from FCA's approval of the termination itself in order to give FCA, the institution's board, and stockholders sufficient time to consider a termination application.

Provides for More Timely Communication with Stockholders, the Public, and FCA. The final rule permits a terminating institution to communicate, without FCA's prior approval, with stockholders and the public during the termination process. We require the institution to timely file such communications with us. We may require correction of misleading or inaccurate information and may require certain termination-related documents to be posted on the institution's Web site and our Web site.

Provides for Special Studies, Analyses, and Rulings. We may require a terminating institution to obtain independent analyses of termination-related matters, as well as to hold informational meetings for stockholders. In a change from the proposed rule, we provide that if we require an independent analysis of the impact of termination solely on parties other than the terminating institution and its stockholders, we will allow the institution to deduct the cost of that analysis when calculating its exit fee.

Ensures Director Rights. The final rule strengthens protections that enable directors to consult with, and be reimbursed for expenses of, independent legal and financial advisors. In a change from the proposed rule, we also provide that the institution's board may deny reimbursement by a two-thirds' vote. In addition, the rule allows public or private expressions of directors' opinions about the termination.

Ensures Sufficient Equity Holder Representation in Voting Processes. The final rule ensures sufficient equity holder representation in voting processes by establishing a quorum requirement of 30 percent of voting stockholders that must be present in person or by proxy at the stockholder meetings for the termination vote and any reconsideration vote. This requirement ensures that a significant proportion of stockholders are engaged in the termination process.

Removes “Material Adverse Effect” Criterion. We eliminate a potentially confusing criterion pertaining to reasons why we may disapprove a termination application. Some members of the public had mistakenly believed that it was the only reason for which we might disapprove an application.

Discloses Changing Structure After a Termination Event. We require a terminating institution to explain to its equity holders any corporate restructuring that is expected to occur within 18 months after termination.

Requires Directors to Vote at Critical Points in Termination Process. The directors vote to initiate the institution’s termination process, vote before sending the disclosure and termination plan to FCA, and vote before sending the disclosure and termination plan to its equity holders. The third vote was added to the new rule to ensure that the board continues to support the termination.

Clarifies Treatment of Taxes. We clarify that, in addition to deducting termination-related tax liabilities in the exit fee calculation, a terminating institution must also add termination-related tax benefits to assets in the calculation.

Eliminates Outdated FAC References. We remove all references to payment of Financial Assistance Corporation debt, because all such debt was repaid in 2005.