

§ 611.1250

(6) Assets that may be overvalued, undervalued or not recorded on the books of the association.

(f) Capital of the terminating association owned by another Farm Credit institution or by the Financial Assistance Corporation shall not be included in capital for the purpose of determining the exit fee.

(g) In the event that GAAP requires that a liability be recorded on the balance sheet that will be offset by an unrecorded asset, the transaction recording the liability shall be reversed.

(h) In the event the terminating association has recorded expenses that would not have been recorded but for the termination, such transactions shall be reversed.

(i) The exit fee shall be paid by certified check, or other means agreed upon by the Farm Credit Administration and the terminating association.

[56 FR 3407, Jan. 30, 1991, as amended at 58 FR 48790, Sept. 20, 1993]

§ 611.1250 Repayment of debts.

(a) The terminating association shall provide for the payment or assumption by the successor institution of all outstanding debt obligations.

(b) The terminating association may establish and maintain an OFI relationship with the Farm Credit Bank or agricultural credit bank, subject to all applicable requirements of part 614, subpart P, of this chapter. The general financing agreement establishing the OFI relationship shall provide for the assumption by the successor institution of any direct loan or other obligation that a production credit association is authorized to incur and that is not repaid at the time of termination. Any part of the direct loan or other obligation that is not linked to a loan covered by the general financing agreement shall be repaid as provided in paragraph (c) of this section.

(c) A terminating association that will not become an OFI shall either repay its direct loan and any other obligations to the Farm Credit Bank or agricultural credit bank upon termination or shall arrange with the appropriate bank to repay the loan or obligation. The terminating association may, with the concurrence of the Farm Credit Bank or agricultural credit bank,

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repay the loan or obligation over a period that shall not exceed 3 years following termination.

(d) The terminating association shall pay or make provision for payment of obligations to any other Farm Credit institutions under any loss-sharing agreement or other agreement.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

§ 611.1255 Retirement of equities owned.

(a) The Farm Credit Bank or agricultural credit bank may retire all equities of the bank that are owned by the terminating association on the termination date or may enter into an agreement with the terminating association that would provide for a phased retirement of the equities. Any such plan for phased retirement shall provide for such retirement to be completed by the earlier to occur of the date on which the terminating association repays all indebtedness to the bank or the date that is 3 years from the termination date, provided that no retirement shall occur during that period if any such retirement would result in the Bank's failure to meet minimum capital requirements.

(b) If the Farm Credit Bank or agricultural credit bank, and the terminating association are unable to reach agreement regarding the retirement of the bank's equities, either institution may send the most recent proposals to the Farm Credit Administration along with an explanation of the points of disagreement. The Farm Credit Administration may require the bank to retire terminating association equities under such conditions as the Farm Credit Administration may require.

(c) No retirement shall occur if the Farm Credit Administration determines that the retirement of equities of the Farm Credit Bank or the agricultural credit bank would threaten the viability of the bank.

(d) The amount to be paid to a terminating association in the retirement of equities owned in the Farm Credit Bank or the agricultural credit bank shall be equal to the amount of the allocated equities owned by the terminating association in the bank, less

any impairment, at the date the request for retirement is made by the terminating association.

(e) If the terminating association has outstanding stock issued to another Farm Credit institution, the association shall retire all such investment prior to termination.

(f) A Farm Credit Bank's or agricultural credit bank's equities obligated to be retired under any agreement between the terminating association and the bank shall not be considered as part of the permanent capital of the Farm Credit Bank or agricultural credit bank for purposes of § 615.5240.

[61 FR 67186, Dec. 20, 1996]

§ 611.1260 Dissenters' rights.

(a) Dissenting stockholders, at their discretion, may, but are not required to, have their stock or participation certificates in the terminating association retired as provided in paragraph (b) of this section. To be eligible to be a dissenting stockholder a person must be the owner, other than a Farm Credit institution, of voting or non-voting stock or other equities of the terminating association who was either—

(1) Not eligible to vote on the termination resolution; or

(2) Eligible to vote on the termination resolution and voted, in person or by proxy, against such resolution.

(b) The terminating association shall pay dissenting stockholders in accordance with the priorities in liquidation set forth in the bylaws of the terminating association. Notwithstanding any provision of paragraph (c) to the contrary, dissenting stockholders who hold eligible borrower stock shall receive not less than par value for their stock.

(c)(1) Except as provided in paragraph (d) of this section, the price paid to dissenting stockholders who own common stock or participation certificates shall be the adjusted book value, which is the book value on the computation date adjusted to reflect—

(i) Any increase or decrease in asset value resulting from the appraisals required in § 611.1240; and

(ii) Deduction of the amount of the exit fee.

(2) Payments made to dissenting stockholders who own common stock

or participation certificates referred to in paragraph (c)(1) of this section shall be made on the following basis. If the adjusted book value of the common stock is less than or equal to the par or stated value of the stock, the full amount of the payment shall be in cash. If the adjusted book value of the common stock is greater than its par or stated value, the association:

(i) Shall pay in cash an amount equal to the par or stated value of the stock or participation certificate; and

(ii) Shall cause or otherwise provide for the successor institution to issue on the date of termination subordinated debt to the stockholder in an amount equal to the amount by which the book value exceeds the par or stated value of the stock or participation certificate. Such subordinated notes shall have a maturity date not in excess of 7 years after the date of issuance, shall have a priority on liquidation ahead of all equity shares but shall be subordinated to the claims of all other creditors, and shall carry a rate of interest that shall be not less than the rate for debt of comparable maturity issued by the Treasury of the United States plus 1 percent.

(d) If the association has adopted bylaws in accordance with § 611.1210(e), dissenting stockholders who own common stock or participation certificates issued in accordance with such bylaws shall be paid in cash an amount equal to the lesser of the par or adjusted book value of such stock or certificates.

(e) For the purposes of this section, common stock consists of voting stock, non-voting stock that was formerly voting stock, and stock that has no priority of payment over any other class upon liquidation.

(f) The notice to stockholders and other holders of equity interests required in § 611.1220(e) shall include the following information:

(1) A statement of the rights of dissenting stockholders as specified in paragraph (a) of this section;

(2) The current book and par value per share, and the expected book and market value of the stockholder's pro rata interest in the successor institution; and