

accordance with section 106A or 106B, as applicable, of the Agricultural Act of 1949, as amended, and shall be paid into the applicable association's Fund or Account.

(i) *Collection and remission of contributions or assessments.*

(1) Any producer contribution or assessment due under this section shall be collected at the time of marketing:

(i) From any dealer or warehouseman who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer; or

(iii) If the tobacco involved is delivered directly to an association, by such association.

(2) A dealer or warehouseman may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) Any purchaser assessment due under this section shall be collected at the time of marketing:

(i) From the dealer or warehouseman who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser for such tobacco.

(4) If tobacco involved is marketed at a warehouse auction, the warehouseman may add an amount equal to the purchaser assessment to the price paid by the purchaser of such tobacco.

(5) All persons who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the date on which the tobacco was marketed except as provided in subparagraphs (i) and (ii).

(i) Warehousemen who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable in accordance with the provisions of the loan contract between the association and the warehouseman.

(ii) Dealers who are responsible for collecting any contribution or assessment as required by this section shall remit such collections to the State ASCS office in accordance with Parts 724 through 726 of this title.

(6) Any person who fails to collect and timely remit any collections required by this section shall be subject to a late payment charge. Such late

payment shall be calculated and assessed in accordance with Part 1403 of this title.

(j) *Penalty for failure to collect and remit contributions or assessments.* (1)

If any person fails to collect and remit any contributions or assessments according to the provisions of this section such person shall be liable, in addition to any amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. Such a penalty only shall be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessment are collected and remitted not later than 15 days after the date required by this part.

(2) If a warehouseman fails to collect and remit any contribution or assessment to an association within 15 days after the date provided in the loan contract between the warehouseman and such association, the association shall provide to the State ASC committee for the state in which the warehouseman's business is located a statement of the reason for the failure of the person to timely remit such collection, including the name and address of the warehouse involved, the pounds of tobacco purchased, the date of purchase, and the date the collection was required to be remitted. The association shall submit such facts within 25 days after the applicable due date regardless of whether such assessment or contribution has been remitted to the association.

(3) The State ASC committee shall be responsible for assessing any marketing penalty determined in accordance with paragraph (j)(1) of this section.

(4) The Deputy Administrator may reduce the amount of any marketing penalty for which a person otherwise would be liable in accordance with the provisions of this section.

(5) The marketing penalty provided in this section is in addition to, and not exclusive of, any other remedies that may be available with respect to collection and remission of any contributions or assessments made in accordance with this section.

Signed at Washington, DC, on September 5, 1986.

Earle J. Bedenbaugh,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-20492 Filed 9-11-86; 8:45 am]

BILLING CODE 3410-05-M

## Rural Electrification Administration

### 7 CFR Part 1747

#### Lien Accommodation and Subordination Policy (Telephone Program)

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Electrification Administration (REA) is adding a new part, Part 1747, Lien Accommodations, to 7 CFR Chapter XVII, containing the mortgage lien accommodation and subordination application procedure and criteria of the REA telephone program and the Rural Telephone Bank (RTB). The rule will enable REA and RTB telephone borrowers to attract the outside capital necessary to finance other telecommunication services. Certain criteria are set forth. The rule will have an impact on all present and future REA telephone borrowers.

**EFFECTIVE DATE:** August 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** John H. Arnesen, Assistant Administrator—Telephone, Rural Electrification Administration, Room 4048, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9554. The Final Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This rule is issued in conformity with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local government agencies; or (3) result in significant adverse effects on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major".

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees, and 10.852—Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. 1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.).

#### Background

On May 8, 1986, REA published a Notice of Proposed Rulemaking to add a new part to 7 CFR Chapter XVII. Currently REA encourages borrowers to submit requests for mortgage lien accommodations or subordinations for purposes provided in the Rural Electrification Act (RE Act) as amended (7 U.S.C. 901 et seq.). This final rule sets forth the REA and RTB policy with respect to the use of financing from private lenders for projects to provide telephone service as defined by section 203(a) of the RE Act.

In addition to facilitating financing from private lenders for RE Act purposes, this new part establishes criteria which REA will consider in accommodating or subordinating the Government's lien for telecommunication services not eligible to be financed under the RE Act.

The final rule defines "telecommunication services" and sets forth application procedures for REA and RTB to consider mortgage lien accommodation or subordination requests which will facilitate financing of such telecommunication services.

#### Comments

In the Notice of Proposed Rulemaking (NPR), REA invited interested parties to file comments on or before June 9, 1986. Although some comments were received after that date, all responses received have been considered in preparing the final rule.

Fourteen different organizations or groups commented on the proposed rule. They are: (1) National Rural Telecom Association, National Telephone Cooperative Association, United States Telephone Association (NRTA, et al.), (2) National Rural Utilities Cooperative Finance Corporation (CFC), (3) Central Bank for Cooperatives (BC), (4) Hargray Telephone Company, Inc. (Hargray), (5) Missouri Telephone Company (Missouri), (6) Telocator Network of America (Telocator), (7) National Association of Business and Educational Radio, Inc. (NABER), (8) Associated Telephone Answering Exchanges, Inc. (ATAE), (9) Allied Radiotelephone Utilities of California (Allied), (10) Radio Paging Service (RPS), (11) The Phone Works (TPW), (12) Able Communications Inc. (Able), (13) LRPS/Stenocall (LRPS) and (14) United States Department of the Treasury.

Comments opposing the proposed rule were submitted by organizations or groups allied with or currently providing telecommunication services or facilities that are not eligible to be financed under the RE Act. Comments supporting the rule were submitted by organizations representing or allied with telephone systems financed by REA or RTB loans or loan guarantees.

Principal objection to the proposed rule was that mortgage lien accommodation or subordination for non-RE Act purposes would provide an unfair competitive advantage to REA borrowers. Those opposed contended that the rule would provide REA-financed systems with an advantage in the cost of financing that would not be available to non-borrowers and, in effect, be a government subsidy of these telecommunication services. One party commented that the proposed rule would have the unfortunate result of placing many rural Americans in the position of having to subsidize their local telephone company's efforts to diversify into new markets, creating an unfair situation for non-REA borrowers to compete against those that can borrow money from the Federal Government and have their loans from outside sources guaranteed by the Federal Government.

Parties supporting the rule commented that deregulation and competition in the industry is eroding and jeopardizing their historical revenue sources. They contended that they must have the flexibility to diversify to successfully accomplish their objective of serving rural America with quality, affordable telecommunication services in this new environment.

Under present policy, REA has approved very few requests for

mortgage lien accommodation or subordination for services not eligible for financing under the RE Act. REA borrowers are generally limited to using internally generated funds or unsecured debt for financing other telecommunication services.

In cases where loan security is not affected, this rule will provide an opportunity for REA borrowers to provide telecommunication services on an equal basis with non-REA borrowers. A lien accommodation from REA does not provide any special incentive to a lender to loan funds at an advantageous interest rate to an REA borrower. Rather, it merely allows the lender to obtain a security interest in facilities it is financing for an REA borrower in the same approximate degree it could obtain Security from a non-REA borrower.

The policy will not permit the use of REA, RTB or FFB loan funds for non-RE Act purposes or the subsidization of unregulated activities by the REA-financed systems.

REA finds that the accommodation or subordination of its lien in appropriate cases as provided for in the rule is advantageous to the Government because providing an opportunity for REA borrowers to compete in the deregulated telephone and expanding telecommunication markets will provide REA and RTB borrowers with additional revenues which should improve their financial stability.

Improved financial stability of REA and RTB borrowers will advance and facilitate their ability to obtain financing from private lenders for services now eligible for financing from REA, RTB or the FFB.

Several of those opposed to the rule contended that the rule would have an effect on the economy of \$100 million or more and was not, therefore, in conformance with Executive Order 12291, Federal Regulation.

REA's opinion on this issue is based on three points. REA has reviewed the equity capital that REA and RTB borrowers have available to allocate to investments in telecommunications projects that would be eligible for financing by this rule by mortgage lien accommodation or subordination. That review shows that if all REA and RTB borrowers were to request mortgage lien accommodation or subordination that their level of equity required by private lending would support a maximum level of investment by the borrowers of from \$35 million to \$70 million.

Secondly, REA believes that this rule will result in far fewer requests for mortgage lien accommodation or subordination than the equity levels

would, at maximum, support because (1) the nature of the projects not eligible for REA or RTB financing, (2) the time involved to develop engineering and economic studies and (3) the special requirements and conditions of the rural areas.

Thirdly, at present less than 10 percent of all telephone borrowers apply annually for financing for Act purposes. Current annual loan levels are approximately 300 million dollars. REA estimates that fewer borrowers would request lien accommodations and that their funding requests for other telecommunication services would be substantially less than their funding requests for their primary (telephone) business purpose.

One respondent commented that the proposed rule would provide REA telephone borrowers with advantages sought in 1983 by legislation which was rejected by the Congress.

REA emphasizes that the 1983 legislation was a major revision of the entire REA telephone and electric programs. It was rejected by Congress for a number of reasons. The mortgage lien accommodation and subordination feature of that legislation for non-RE Act purposes was a minor part of that comprehensive legislation. The rule provides a method for considering the financing of non-Act telecommunication projects by REA telephone borrowers, rather than mandating mortgage lien accommodation or subordination as was proposed in the 1983 legislation. REA also emphasizes that each request for a mortgage lien accommodation or subordination will be considered under the proposed rule on a case-by-case basis utilizing specific criteria and following application procedures set forth in the rule.

The Department of the Treasury commented in opposition to the section of the rule that would allow subordination of REA's lien on after acquired property.

REA will not take a subordinate position on any property which it has financed, or on any property on which it currently enjoys a security position. The only circumstance under which REA will consider a subordination will be on property which the borrower is considering obtaining in the future with financing from private lenders. This "after-acquired" property would be obtained without government financing or government guarantee. It is REA's contention that the government, therefore, has no need in these circumstances to have an equal or superior standing with the private lender on the after-acquired property until such time as the private loan is repaid. At

that point the government's lien would attach to the "after-acquired" property.

Both those who supported the proposed rule and those who opposed it commented on the definition of "telecommunication project" in Part 1747.2(e). Those opposed to the proposed rule commented that the definition was too broad. They generally wanted the definition to apply only to facilities presently eligible to be financed under the RE Act. Supporters of the rule wanted expansion of the definition; several commenters wanted it to specifically include acquisitions, refinancing, and rural development. REA acknowledges that there could be some confusion concerning the term "telecommunication project".

Consequently, all references to "telecommunication project" are changed to "telecommunication services" to coincide with RE Act language. The definition in the rule closely parallels the definition of telephone service in the RE Act, but has been made more expansive in order to reflect technological and market changes.

REA does not believe the definition is too broad because one of the primary purposes of the rule is to encourage and enable REA borrowers to compete in a wide range of telecommunication endeavors. Neither should the definition be so broad that it includes any project that promotes "rural development" because REA believes that its telephone borrowers should focus on those enterprises which are clearly related to telecommunications. The definition, as written, allows mortgage lien accommodations or subordinations for acquisitions, but not for refinancing. This is because acquisitions directly relate to the provision of new, and expansion of existing, telecommunication facilities, while refinancing does not necessarily lead to these ends.

Several parties commented that references to financing other than from REA, RTB, or FFB as "private lenders," "other lending organizations" or "financing elsewhere," could be confusing and may not include some lenders, such as the Banks for Cooperatives of the Farm Credit System. The final rule is changed to define "private lenders" as lenders other than "REA, RTB or FFB."

Several parties commented that not all requests for mortgage lien accommodation or subordination will require consideration by the Administrator or RTB Governor of all of the items listed in 1747.20(b) "to determine that security for outstanding government loans and guarantees is

reasonably adequate. . ." The final rule has been changed so that it reads, the Administrator or the RTB Governor will consider, among other matters, when applicable, the following: . . ."

Several respondents suggested also that engineering studies prepared for financing from private lenders may be sufficient for REA as part of an application for mortgage lien accommodation or subordination. They suggested that the requirement for engineering studies implied that separate studies should be prepared for REA. The final rule is changed by adding "when applicable" to 1747.30(b)(3).

#### List of Subjects in 7 CFR Part 1747

Loans programs-communications telephone.

In view of the above, REA hereby adds a new part, Part 1747—Lien Accommodation and Subordination (Telephone Program), to 7 CFR Chapter XVII to read as follows:

#### Part 1747—Lien Accommodations and Subordination Policy

##### Sec.

1747.1 General.

1747.2 Definitions.

1747.3-1747.9 (Reserved).

1747.10 Act Purposes.

1747.11-1747.19 (Reserved).

1747.20 Non-Act Purposes.

1747.21-1747.29 (Reserved).

1747.30 Application Procedures.

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

##### § 1747.1 General.

Recent changes in the telephone industry, including deregulation and technological developments, have caused REA borrowers and other organizations providing telephone services to consider undertaking projects to provide new telecommunication services. Although certain telecommunication services may not be eligible for financing under the RE Act, these services may nevertheless advance Act objectives where the borrower obtains financing from private lenders. The borrower's financial strength and the assurance of repayment of outstanding Government debt may be improved as a result of providing new telecommunication services. To facilitate the financing of new telecommunication services, REA is willing to consider accommodating the Government's lien on telephone borrowers' systems or subordinating the Government's lien on after-acquired property of telephone borrowers. This part sets forth REA policy with respect

to such lien accommodations and subordinations. The policies of this part will also be utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's loan program.

#### § 1747.2 Definitions.

(a) "Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.).

(b) "Accommodation" means sharing the Government's lien on a *pari passu* or pro rata basis with a private lender.

(c) "Subordination" means granting a lien which a private lender has on specific property priority over the Government's lien on such property.

(d) "After-acquired property" means property which is to be acquired by the borrower and which would be subject to the lien of the Government's mortgage when acquired.

(e) "Telecommunication services" means any service for the transmission, emission, or reception of signals, sounds, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

(f) "Private lender" means any lender other than the Rural Electrification Administration, the Rural Telephone Bank or the Federal Financing Bank.

#### §§ 1747.3-1747.9 [Reserved]

#### § 1747.10 Act purposes.

(a) Borrowers are encouraged to submit requests for accommodation of the Government's lien on the borrower's system in order to facilitate obtaining financing from private lenders for purposes provided in the RE Act.

(b) The Administrator will consider requests for the subordination of the Government's lien on after-acquired property which will enable borrowers to obtain financing from private lenders for purposes provided in the Act. Provided, however, that property integral to the operation of projects financed with loans made or guaranteed by REA shall be financed with funds obtained through lien accommodations instead of lien subordinations, unless the Administrator determines that it is in the Government's interest to do otherwise.

#### §§ 1747.11-1747.19 [Reserved]

#### § 1747.20 Non-act purposes.

(a) The Administrator will consider requests for the accommodation of the Government's lien on the borrower's system or the subordination of the

Government's lien on after-acquired property which will enable the borrowers to obtain financing from private lenders for the purpose of providing new telecommunication services which may not be eligible for financing under the Act if the Administrator is satisfied that:

(1) The borrower will have the ability to repay its existing and proposed indebtedness;

(2) The security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination; and

(3) Approval of the request is in the interests of the Government.

(b) In determining that the security for outstanding Government loans and guarantees is reasonably adequate and will not be adversely affected by the accommodation or subordination the Administrator will consider, among other matters, when applicable, the following:

(1) Market forecasts for the project;

(2) Projected revenues, expenses and net income of the borrower's existing system and the project;

(3) Maximum debt service on indebtedness of both the borrower's system and the project;

(4) Projected rate of return on the borrower's investment in the project;

(5) Fair market value of property acquired by the borrower as part of the project;

(6) Impact of the project on the ratio of the borrower's secured debt to assets;

(7) Projected growth in borrower's system and project equity; and

(8) Amount of funds available for plant additions, replacements and other similar costs of the system and the project.

(c) In determining whether the accommodation or subordination is in the interests of the Government, the Administrator may consider, among other matters, whether the project will improve the borrower's financial strength and the assurance of repayment of Government debt.

#### §§ 1747.21-1747.29 [Reserved]

#### § 1747.30 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator—Telephone Rural Electrification Administration, Washington, DC 20250-1500.

(b) An application for a lien accommodation or subordination shall include the following supporting information:

(1) A board Resolution from the applicant requesting the lien accommodation or subordination and stating the general purpose for which the funds from the private lender will be used, the proposed amount of the loan, and the proposed terms and conditions of the loan;

(2) An opinion from counsel representing the applicant that the applicant has the authority under its articles of incorporation, bylaws, and under applicable state law to undertake the project;

(3) Engineering and pertinent studies related to the projects or purposes to be financed, when applicable;

(4) Feasibility studies with pro forma financial statements showing the ability to repay the loan and provide an appropriate margin or net income;

(5) Such information regarding the environmental impacts of the project as may be required pursuant to 7 CFR Part 1794; and

(6) Any other information or documentation deemed pertinent by the borrower or the Administrator in support of the application.

(c) When the Administrator makes a determination that an application for an accommodation or subordination will not be approved the Administrator shall set forth the reasons therefor in writing and furnish such determination and reasons to the borrower within 30 days of the determination.

Dated: August 7, 1986.

Jack Van Mark,

Acting Administrator.

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 611

#### Farm Credit System; Merger, Consolidation, Etc.

AGENCY: Farm Credit Administration.

ACTION: Final rule.

**SUMMARY:** The Farm Credit Administration (FCA), by action of the Farm Credit Administration Board (Board), publishes final regulations implementing recently enacted amendments to the Farm Credit Act of 1971 (Act) relating to mergers, consolidations, and territory transfers, and conservatorships and receiverships of the financial institutions of the Farm Credit System (System).

**EFFECTIVE DATE:** The regulations shall become effective upon the expiration of 30 days after this publication during

which either or both Houses of Congress are in session. Notice of effective date will be published.

**FOR FURTHER INFORMATION CONTACT:**

Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090 (703) 883-4020

**SUPPLEMENTARY INFORMATION:** On May 8, 1986, the FCA published a Notice of Proposed Rulemaking (51 FR 17035) for the promulgation of regulations implementing a number of sections of the Act which were amended by the Farm Credit Amendments Act of 1985 (1985 Amendments). These regulations governing the operations of System institutions relate to the topics of mergers, consolidations, territory transfers, conservatorships and receiverships, and stockholder/borrower rights. The FCA received 21 comments on the proposed regulations. Comments were received from six System borrowers, five System associations, a System bank, the Farm Credit Corporation of America (FCCA) on behalf of the 37 banks of the System, a Congressman, an attorney, a public accounting firm, two farmers' organizations, a legal services group, the governor of a Midwestern State and certain persons representing various interests in that State, and a group of attorneys general from five Midwestern States. Because of the number and complexity of the issues raised by commentators, the Board has determined that in order to properly respond to the comments, the regulations will be divided into two groups and considered separately. The first group of regulations is contained in this publication and relates to mergers, consolidations, territorial transfers, and conservatorships and receiverships of System institutions. The second group of regulations, relating to the rights of borrowers and stockholders of System institutions, will be considered by the Board in the near future.

The Board analyzed and considered each comment and responds to the comments on the basis of a thorough consideration of the merits of the points of view expressed therein.

**Section-by-Section Analysis and Response to Comments**

**§ 611.1090 Request for district changes—general.**

The regulation establishes the requirements applicable to the merger of districts, the transfer of territories between districts, and the means by which a district may change its name. District mergers and territory transfers

require the approval of the stockholders of the banks involved and the FCA.

The FCCA commented that stockholder approval should not be required for all transfers of territories since many of such transfers involve only small parcels of land and relatively few borrowers. The FCCA believes that in cases involving minor transfers, the interests of stockholders are adequately protected by other regulations governing the transfer of territory between associations and the requirement that district boards approve all transfers between districts. The FCCA also requested clarification of whether the regulation requires approval by the stockholders of the district banks, which are production credit associations (PCAs), Federal land bank associations (FLBAs), and cooperative borrowers, or by the stockholders of the PCAs and FLBAs involved. The FCCA believes that the regulation should only require approval by the stockholders of the banks involved.

The FCCA correctly notes that in accordance with § 5.17(a)(2) of the Act, mergers of district banks must be approved by the stockholders of the banks, not the stockholders of the associations in the district. Thus, the merger must be approved by the cooperatives that are stockholders of the banks for cooperatives (BCs) involved, the FLBAs that are stockholders of the Federal land banks (FLBs) involved, and the PCAs that are stockholders of the Federal intermediate credit banks (FICBs) involved. While this requirement is clear in the law and implicit in the regulation, the Board revised the final regulation to clarify the point.

In response to the comment that the regulation should be amended to eliminate the requirement for stockholder approval for some transfers of territories between districts, the Board notes that § 5.17(a)(2) of the Act provides that all transfers of territories between banks require the approval of the stockholders of the banks involved and § 5.0 requires that changes in the boundaries of districts require the approval of the district boards. In accordance with these statutory requirements, the regulation must include a requirement for stockholder approval for all territory transfers. In the event a transfer of territory between districts involves all of the banks in a district, the approval of the district board and the approval of the stockholders of each of the banks is required. In the event a transfer of territory between districts involves only one or two of the banks in a district,

approval is only required of the stockholders of the banks involved.

The Board noted that the proposed regulation contained only minor technical amendments to a regulation that has been in effect for a considerable period of time. However, the nature of the comments received indicates that there is some uncertainty regarding its provisions. Accordingly, the Board decided to substantially rewrite the regulation to correct any ambiguities and reduce the possibility of misinterpretation.

**Section 611.1121 Charter amendment procedures.**

The proposed regulation only contains procedural changes to the current regulation that provide for direct communications between the FCA and associations. The new procedures provide that the district bank shall review and analyze the proposed amendment to an association's charter and forward its recommendation on such proposal to the FCA and to the association. The association transmits the proposed amendment to the FCA and upon receipt of such material, the FCA reviews the materials and either approves or disapproves the request. Finally, the FCA notifies the association of its action and provides a copy of the communication to the bank.

The FCCA expressed its objection to this regulation and other regulations which provide for direct communications between the FCA and associations. The FCCA stated that this change is not required by the 1985 Amendments and believes that this constitutes an attempt by the FCA to erode the supervisory functions of the banks over associations. The FCCA maintains that communications between associations and the FCA should only be made through the district bank since this provides the only means by which banks have an opportunity to raise relevant issues in a timely manner with the FCA or the associations.

The Board does not concur in the recommendations of the FCCA. The Act establishes the FCA as the Federal agency responsible for chartering, examining, and regulating all banks and associations of the System. While, in the past, the FCA has delegated many functions to district banks and has relied on the banks to transmit communications to associations, those delegations did not eliminate the FCA's authorities or responsibilities in connection with the activities of associations. The 1985 Amendments eliminated the authority of the FCA to delegate its functions to the

banks and required the FCA to conduct yearly examinations of all banks and associations. In addition, the amendments give the FCA specific enforcement authorities which can be exercised with respect to both banks and associations. In order for the FCA to be in a position to effectively carry out its statutory responsibilities, it must establish direct communications with System associations and must, by regulation, ensure that it is in a position to take actions with respect to associations, regardless of the position of the bank involved. These regulatory changes in no way affect the debtor/creditor relationship between the banks and associations and the statutory supervisory responsibility of banks over associations. Contrary to the assertion of the FCCA, the regulations do contain provisions which ensure that banks receive timely notification of decisions by the FCA and associations.

*Section 611.1122 Requirements for mergers or consolidations.*

The proposed regulation amends the current regulation by eliminating the requirement for association boards of directors to approve a districtwide reorganization plan that has been adopted by a district board. Rather, each association board would provide stockholders with a statement either endorsing or opposing the association's participation in the plan. The regulation also provides that bank approvals of association mergers or consolidations (hereafter referred to as "mergers") are only required at the preliminary approval stage. After approval by the bank, preliminary approval by the FCA, and an affirmative stockholder vote, the FCA will grant final approval in connection with the issuance of new or amended charter documents. In addition, the regulation provides for direct communication between the FCA and the associations requesting approval of a merger proposal.

The FCCA supported the portion of the regulation that permits the stockholders of all associations to vote on mergers that are part of a district reorganization plan even though the board of directors of one or more associations oppose the proposal. However, the FCCA expressed concern that § 611.1122(a)(3)(ii) could be interpreted to mean that where the board of directors of more than one association disapproves participation in a districtwide plan, the merger process would be terminated.

Taking the opposite position, a California PCA objected to the provision on the basis that it prevents a board of directors from carrying out its duties

and circumvents the board's responsibilities as the stockholders' elected governing body.

The FCCA opposed the elimination of the requirement for district banks to give final approval to mergers of associations. The FCCA stated that since the district bank's authority is equal to that of the FCA, providing the FCA, but not the district bank, with final approval authority is inconsistent with the Act. The FCCA believes that such approval authority is essential in order for the banks to discharge their supervisory responsibilities. Reiterating an earlier comment, the FCCA objected to the provision in the regulation that relates to direct communications between the FCA and the associations involved in a merger.

Other comments addressed more general issues. A Minnesota legal services organization requested that the FCA clarify the statement in the supplemental information accompanying the proposed regulation that the authority of the agency to amend charters and transfer territories on its own initiative was unchanged. Several individual borrowers stated that the merger regulations should attempt to preserve control of associations at the local level. They believe that the centralization that has occurred at the district level has led to a breakdown in communications between borrowers and association personnel.

The Board has made a technical amendment to the regulation which clarifies that, in the case of districtwide mergers, the stockholders of the associations involved will have an opportunity to vote on the merger, even if more than one association board of directors is opposed to the proposal. In response to the comment that this provision is in derogation of the authorities and responsibilities of association boards, it is noted that §§ 4.12 and 5.17(a)(2) of the Act do not require association boards of directors to approve association mergers. To the contrary, this is one of the few corporate acts for which the Act specifically requires stockholder approval. While under general corporate legal principles board approval would be required, the Board believes that the amended regulation carries out the express provisions of the Act and is also consistent with the intent of several provisions contained in the 1985 Amendments which were designed to maximize stockholder involvement in mergers of System associations.

The elimination of the two stages of bank approval in connection with association mergers is more in the

nature of a technical change. Following approval by the bank, preliminary approval by the FCA, and approval by the stockholders of the associations involved, the only remaining step in the process is the granting of final approval by the FCA in connection with the issuance of new or amended charter documents to the associations involved. There is no need for a second stage of bank approval and it is unclear upon what basis the bank could disapprove a merger after it has been approved by the stockholders of the associations involved. If the bank has a basis for opposing a merger proposal it should deny approval of that proposal before it is submitted to the stockholders for a vote.

In response to the comment seeking clarification of the authority of the FCA to require a merger, the proposed regulations did not amend the existing authority of the FCA derived from § 5.17(a)(2) to issue or amend charters of any System institution when deemed appropriate to carry out the policies and objectives of the Act. This general agency power is, of course, limited by other provisions in the Act, such as § 4.12, which provides that the FCA may only require the merger of an association with the concurrence of the district board, when an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with the Act.

*Section 611.1123 Merger or consolidation agreements.*

The proposed regulation provides that association directors may, with FCA approval, terminate a merger that has been approved by stockholders only where (1) the information disclosed to stockholders contained material errors, (2) misrepresentations were made to stockholders regarding the impact of a merger, (3) fraudulent activities were used to obtain stockholder approval, or (4) any other intervening event of a significant nature occurred subsequent to a stockholder vote that could have had an impact on such vote. The FCCA commented that while it, in general, agrees with the purpose for the regulation, it objects to the approach taken by the FCA. The FCCA argued that Congress did not intend for the FCA, rather than the stockholder-elected directors, to have the authority to overrule a stockholder vote on a merger or consolidation. The FCCA stated that if the FCA believes it should have the power to terminate a merger for reasons 1 through 3, the agency should adopt a regulation to that effect. The FCCA does not believe those reasons are

appropriate grounds for an association board to stop a merger. In the FCCA's view, there is no basis in the 1985 Amendments for requiring a merging association to make what the FCCA characterizes as a legal determination. The FCCA suggests that the regulation should provide that a merger agreement may be terminated by one or more of the merging associations with the concurrence of the district banks only upon a determination that an intervening event occurred between the time of the vote and the effective date of the merger that would have a significant adverse impact on the future viability of the continuing institution or that additional material information became available following the stockholder vote and that it would be in the best interest of the stockholders to reconsider the proposed merger. The FCCA also noted, as a technical matter, that the explanation of the proposed regulation appears to be inconsistent with the language of the regulation in that the former focuses on matters that could have an impact on the vote, while the latter applies to events that could have a significant impact on the future viability of the institution.

In response to the FCCA comment that this regulation gives the FCA the authority to override a stockholder vote in favor of a merger, the FCCA has apparently misread the regulation. The regulation does not empower the FCA to override stockholder votes, but rather requires that in order for a board to override the stockholder vote, FCA concurrence must be obtained.

The Board believes that the FCCA recommendation that the district bank be substituted for the FCA as the authority responsible for concurring in the association board decision to disapprove a merger is without merit. The FCA's statutory responsibility for the examination and regulation of all System institutions, including associations, and its specific authority to issue and amend charters of institutions, require that the FCA have the final determinative authority regarding these actions. In light of the fact that the statute explicitly provides that associations may merge upon the affirmative vote of the stockholders of the associations involved, any association board action that would override a stockholder vote must be carefully circumscribed and closely monitored by the FCA. The inclusion of the district bank in the process would only add an additional step since FCA approval of this board action is imperative. While the Board agrees that it is unlikely that this type of situation

will often arise, instances have occurred in the past where association boards, which have been reluctant to go along with mergers at the outset, have sought to override affirmative votes by their stockholders based on their determination of what they believe to be in the stockholders' best interests. The Board believes that the association boards should be able to voice those concerns and propose that the merger not proceed, but that FCA approval of such action is required in order to preserve the preeminence of stockholder rights in connection with mergers.

In addition, the Board believes that the circumstances under which a stockholder vote can be overridden must be carefully delineated and strictly interpreted. The proposed regulation sets forth four conditions under which a board of directors can override a vote of stockholders. The first three relate to actions occurring before or at the time of the vote that could have had an effect on the vote. The last criterion relates to an event which occurred after the vote that could have a significant adverse impact on the future viability of the association. In response to the FCCA comment regarding the first three criteria, the Board notes that the criteria do not necessarily require association boards to make an admission of improper disclosure regarding matters over which they had control. It would be anticipated that any board invoking one of those three criteria would do so on the basis that another association that was a party to the merger had provided inaccurate or incomplete information or had used impermissible tactics in trying to influence the outcome of the vote. The last criterion is specifically limited to intervening events which could have an adverse impact on the viability of the continuing institution. This provision is partially consistent with one of the proposals set forth by the FCCA. However, it does not allow the override to be based on intangible considerations which would not have an effect on the viability of an association but which would, in the opinion of a board, have influenced the outcome of the vote. The Board believes that adoption of the change proposed by the FCCA would create an open-ended invitation for a board to continue to seek revotes until the stockholders finally acquiesced in the position of the board.

#### *Section 611.1124 Territorial adjustments.*

The proposed regulation sets forth the disclosure requirements for the transfer of territory between associations. The disclosure requirements parallel those relating to mergers but do not include

the same requirements for detailed financial information. While generally concurring with the substance of the proposed regulation, the FCCA offers several comments relating to specific aspects of the regulation. The FCCA suggests that the FCA add a provision similar to that contained in the merger section of the proposed regulations that would permit a stockholder vote on a districtwide territorial transfer plan adopted by a district board notwithstanding disapproval by a particular association board. In addition, the FCCA also recommends that the term "financial statements and related information" as used in § 611.1124(f)(8) be defined to mean the association's annual financial statements for the previous 3 years as well as other financial information prepared by the association concerning the proposed transfer of territory. Consistent with its previous comments, the FCCA objects to the provision that provides for direct communication between the associations and the FCA. In addition, the FCCA suggests that this section should include a cross-reference to § 611.1090 which would clarify that these procedures would apply to the transfer of a portion of an association's territory to an association operating in a different district.

The Board agrees with the recommendation of the FCCA regarding the need for a provision in the territorial transfer regulations comparable to the merger regulations which provides that in the event of a districtwide territorial transfer plan, the stockholders of the affected associations should have an opportunity to vote on the proposal even if one or more of the association boards involved objects to the proposal. The Board agrees with the recommendation of the FCCA that § 611.1124(f)(8) be amended to clarify that "financial statements and related information" of the association that are available upon request by an association stockholder means the association's financial statements for the previous 3 years plus any other financial information prepared by the association concerning the proposed transfer of territory. The Board also agrees with the need for a cross-reference to § 611.1090. The final regulation has been amended to reflect these changes.

#### *Section 611.1125 Treatment of associations not approving districtwide mergers or consolidations.*

The proposed regulation prohibits district banks from discriminating against associations that refuse to join a districtwide merger or consolidation by

denying or limiting financial services or assistance, financially related services, or professional or technical assistance.

Two comments were received on the proposed regulation. A North Dakota farmers' group made a general comment that the regulation should be more emphatic in its prohibition of district bank discrimination against associations not approving a districtwide merger. The FCCA concurred with the requirements contained in the proposed regulation, but recommended the adoption of several technical amendments. The FCCA stated that the regulation should be amended to clarify that (1) district banks are not required to treat FLBAs in the same manner as PCAs, and (2) a decision not to provide financial assistance to an association is only discriminatory if it is based on the association's refusal to join a merger.

In response to the first comment, the sole purpose for the regulation is to achieve the result sought by the farmers' organization. The regulation clearly prohibits the types of discriminatory conduct which could occur between a bank and a dissenting association. The Board amended the final regulation to include the clarifying amendments sought by the FCCA and believes that with these amendments the concern of the farmers' organization will have been addressed.

The proposed regulation, in accordance with the requirements of the Act, prohibits bank actions directed at dissenting associations that are not based on valid financial considerations. In the normal course of business banks must make decisions affecting associations based on the needs of the associations and their financial and operating strengths and weaknesses. The Board agrees with the FCCA comment that this intent should be clarified and the final regulation is amended accordingly.

The Board believes there is no basis for the FCCA's comment that the regulation could require that FLBAs and PCAs be treated uniformly. The regulation prohibits discrimination by banks against associations. FICBs have financial dealings with PCAs, not FLBAs, and the reverse applies to FLBs. FICBs do not lend money or provide financial assistance to FLBAs; as such, there is no basis upon which they can treat FLBAs differently.

*Section 611.1156 Grounds for appointment of conservators and receivers.*

The proposed regulation establishes the grounds for the appointment of a conservator or receiver of a System

institution. The Act and the regulation provide that an institution is insolvent when its assets are less than its obligations to creditors and others, including its members. While member stock is part of the capital of an institution, for purposes of this regulation it is considered an obligation of the institution. Thus, an institution is deemed insolvent when its stock has a book value less than par. "Obligation" is defined to include liabilities, stock and participation certificates, but not other "equities," such as retained earnings. The regulation also restates the other statutory bases for the appointment of conservators and receivers.

Comments on this provision were received from a North Dakota farmers' organization, the FCCA, and the System's accounting firm. The farmers' organization suggested that the regulation should define the terms "unsafe or unsound practice" and "unsafe or unsound condition." It believes that in the absence of a definition, such terminology tends to be subjective and judgmental, and might be utilized by the FCA in an arbitrary and capricious manner. The FCA is authorized to define this term by regulation, rule or order. The Board is not required to and does not believe it would be appropriate to adopt a general regulatory definition that would be applicable solely to these receivership regulations.

The FCCA and the accounting firm expressed concern regarding the inclusion of capital stock and participation certificates in the definition of "obligation" for purposes of determining insolvency. The FCCA asserted that the inclusion of capital in the definition of obligation is contrary to well-established principles of corporate law and is without any basis in the Act. The accounting firm argued that this treatment is a significant departure from the generally accepted meaning of capital and stated that it knows of no other comparable definition.

The FCCA made a number of arguments to support its position. It stated that the Bankruptcy Act and the Uniform Commercial Code do not treat stockholder capital as a debt of the institution for purposes of determining insolvency. The FCCA also stated that it has found no court decision holding that the capital stock of a corporation is an obligation for purposes of determining insolvency and noted that, in the cases it has examined, the courts have excluded capital stock from such determination. The FCCA stated that the definition of insolvency in § 4.12(b), which was adopted as part of the 1985 Amendments, was drawn from the

language in the statute granting the Federal Home Loan Bank Board (FHLBB) the authority to appoint conservators and receivers for savings and loan associations. The FCCA argues that analogizing the relationship of members of a mutual savings and loan association to System stockholders is inappropriate because such members are depositors who are creditors of the institution. Furthermore, the FCCA stated that the FHLBB has never treated a member's capital investment in an association as an obligation of a savings institution.

In further support of its position, the FCCA argued that the disclosure documents provided to borrowers describe the benefits and risks of stock investments in PCAs and FLBAs. Those documents clearly state that capital stock is an "at risk" investment in the institutions. The FCCA stated that if capital stock is treated as an obligation of the institution, it should be reflected in the financial statements as a liability rather than equity. In this same vein, the accountant added that this definition may force the FCCA to give consideration to reclassifying capital stock and participation certificates as liabilities in the financial statements of System institutions.

The FCCA also suggested a technical change in § 611.1156(b)(5) to add the word "FCA" before "examiner." The Board believes this technical amendment is unwarranted and could be confusing since bank credit reviewers are not empowered to "examine" System institutions.

The Board approved the final regulation without change. Prior to enactment of the 1985 Amendments, the Act provided that a System institution was deemed insolvent when it had defaulted on an obligation. The principal obligations of each System institution are its debt obligations. In the case of PCAs, the principal debt obligation is embodied in a general financing agreement that provides a direct line of credit with the FICB. In the case of System banks, the principal obligations are the notes and bonds on which they are primarily or secondarily liable. Upon a determination of insolvency, the FCA may, but is not required to, place the institution in liquidation.

The old definition of insolvency in the Act was, in substance, cash insolvency rather than book insolvency. Because of the nature of the repayment terms contained in the general financing agreements, and the credit limits contained in those agreements, a PCA would usually default on its general financing agreement before its stock

was impaired. At that point, the PCA could be placed in liquidation. The Act provided for liquidation prior to impairment in order to prevent stockholders from initiating "runs" on their associations, and to provide a financial buffer that would protect the FICB from the additional losses that are often incurred in connection with the collection of the assets of a PCA in liquidation. This definition of insolvency also protects investors in System securities by ensuring that there is a reserve of equity capital that can be impaired. The 1985 Amendments changed the terminology used in defining insolvency, but did not change the underlying purpose of the prior law, which was to define insolvency in a manner that would provide adequate protection to banks and investors in System securities and protect stockholders from "runs" on their institutions.

The Board recognizes that the definition of insolvency in the Act is different in its effect than the definitions of insolvency that are applicable to most other entities under banking and the bankruptcy law. However, there are legitimate reasons for those differences. If a PCA operates with impaired stock, its stockholders will have to be provided with a disclosure of that impairment. Upon the disclosure of an impairment, it can be reasonably projected that all borrowers who are able to do so will seek credit elsewhere to repay their loans, and if possible seek retirement of their stock at its impaired value. Any PCA that attempts to conduct normal operations with impaired stock will see its asset base rapidly disappear and could see a serious erosion of its capital. Eventually, its stock will have little or no value. When the PCA is placed in liquidation at that point, its principal creditor, the FICB, will in all probability suffer a significant loss on its loan to the PCA. If this occurs on a large enough scale, it could cause the insolvency of the FICB and consequent losses to investors in its securities.

The definition of insolvency is applicable to banks for the same reasons. While, in theory, a bank can continue to operate with impaired stock, the impairment of the bank's stock will have to be reflected on each association's books by a reduction in the value of its assets. That action will have the effect of moving all associations closer to impairment with the same results discussed above.

The Board believes that the FCCA and the System accountant are primarily concerned that this definition of insolvency would cause other parties to

consider System stock as debt rather than equity. That is not the purpose or effect of this regulation. In fact, this regulation has the exact opposite result. This definition appears in a subpart which specifically provides in §§ 611.1166 and 611.1174 that all debt obligations of associations must be paid before the stockholders receive a liquidating dividend upon final liquidation of the bank or association. The regulations make clear that System stock is treated as an equity investment, not a debt obligation, for purposes of determining the priority of claimants in the event of liquidation. This is consistent with the treatment of equity stock in a commercial bank. Even equity stock in a commercial bank is, in effect, an obligation that is subordinated to the claims of general creditors. Equity stockholders are entitled to a distribution on their equity from any residual funds on final liquidation.

This definition in no way changes the status of stock and other forms of equity, and does not alter the priority of debt over equity. To the contrary, if the definition were amended in accordance with these comments, it would have the exact negative effect that these commentators are concerned about. It would result in each System institution being permitted to continue operations and incur financial losses that would completely dissipate all its equity capital prior to the liquidation of the institution. In that event, there would be no resources to protect holders of System securities from potential losses on their investments. Realization of this fact could cause a serious disruption in the current funding activities of the System.

#### *Section 611.1157 Conservators and receivers.*

The proposed regulation describes the purposes, responsibilities, and authorities of conservators and receivers. A conservator operates an institution on a continuing basis until the FCA makes a determination regarding the institution's future status. The conservator exercises all powers of the association necessary to continue its operations and otherwise protect the interests of all concerned parties. A receiver is appointed to wind up the business affairs of the institution, collect its debts, liquidate its assets, and distribute the proceeds to creditors and stockholders.

The FCCA objected to the phrase in § 611.1157(a) which provides that a conservatorship may be terminated and the institution "turned over to such management as FCA may direct." The FCCA stated that upon discharge of a conservator, the management of the

institution should be returned to its elected board of directors on such terms as are acceptable to FCA and the board. The FCCA believes this is the only way of ensuring the future accountability of a board of directors to its stockholders. The FCCA argued that if the FCA is not satisfied with the conduct of certain directors it should seek their removal pursuant to the appropriate enforcement powers, and not attempt to circumvent the procedures for removing officers and directors through the use of conservatorship powers. Accordingly, the FCCA suggested that the FCA adopt a provision similar to the FHLBB regulation at 12 CFR 547.8 (1986).

The Board adopted a technical amendment to the second sentence of this section in accordance with the recommendation made by the FCCA.

In response to the substantive comment of the FCCA regarding this provision, the Board notes that the FCCA did not discuss FHLBB regulations upon which this regulation was patterned. The FHLBB regulations specifically provided, at 12 CFR 547.7, that "[t]he Board may at any time: (a) Direct the conservator or receiver to turn over the association to its previous management or new management;". The FHLBB regulation referred to by the FCCA relates only to circumstances in which the conservator is directed to return control of the association to its prior management.

The purpose of this regulation is to provide maximum flexibility to the FCA in making a determination regarding the eventual resolution of the problems of an institution in conservatorship. While a conservator is in possession of an institution, he/she succeeds to all of the powers and duties of the directors, officers, and employees of the institution. During the period an institution is under a conservator, situations may exist which would make it imprudent, impractical, or otherwise not in the best interests of the institution to return its operations to the prior management. In those situations, the FCA must have the flexibility to appoint a new board and management to serve until such time as new elections can be held for the institution.

#### *Section 611.1158 Action for removal of conservator or receiver.*

The proposed regulation provides that an institution may, through its board of directors, and within 30 days of the appointment of the conservator or receiver, bring an action in United States District Court for an order requiring the FCA to remove such conservator or receiver. The regulation

specifically provides that only the board is empowered to authorize the filing of a removal action.

A North Dakota farmers' organization suggested that the 30-day appeal period should be extended to 60 days. It also suggested that a procedure should be provided whereby a suspended board of directors could obtain review of any action of a conservator or receiver. As a technical matter, the farmers' organization believes that the language in §§ 611.1160(d), 611.1170(c), and 611.1180(c) should be rewritten to emphasize that an institution's board of directors is empowered to meet to determine whether to file a removal petition.

The FCCA commented that stockholders of an institution should be entitled to initiate a derivative action to seek removal of an FCA conservator or receiver. It stated there is no basis in the Act or the regulations of other Federal banking agencies for limiting the right to initiate a removal action to the institution's board of directors. As a general matter, the FCCA believes that the FCA's authority under § 4.12 must be interpreted in light of the provisions of the 1985 Amendments which empower the Farm Credit System Capital Corporation (Capital Corporation) to provide financial assistance to System institutions. In this regard, the FCCA believes it would be an abuse of discretion for the FCA to appoint a conservator or receiver to an institution on the grounds of insolvency pending a decision by the Capital Corporation on a request for financial assistance.

The regulatory provision providing for an action to be filed in District Court for the removal of a conservator or receiver is specifically provided for in § 4.12 of the Act. This is a jurisdictional requirement specifically provided for in the statute and is consistent with a similar provision provided for with respect to FHLBB receivers and conservators. This provision has been upheld in court and the staff knows of no reasons why the FCA, by regulation, should attempt to enlarge it.

The provision providing that removal actions shall be filed by the board of the institution is consistent with the statutory requirement that such actions only be brought by the institution involved. The regulation merely seeks to clarify that the board is empowered to meet for the sole purpose of deciding whether such action should be commenced.

In response to the comment from the farmers' organization, the Board does not believe the regulation can be more explicit in providing specifically for the board of directors to meet to determine

whether or not to file a removal petition. Section 611.1158 specifically provides that notwithstanding any other provisions in the regulations, the board of an institution may meet to determine whether to initiate an action on behalf of the institution to remove a receiver.

In response to the FCCA comment, the Board does not believe that the regulation should authorize a derivative action by stockholders to challenge the appointment of a receiver. The Board believes that the statutory requirement is clear, that such actions may only be brought by the institution. The Board believes that derivative actions should not be provided for in the regulation and should not be permitted in a reviewing court. The regulatory provision authorizing the board to meet is specifically designed to protect the interests of the institution's stockholders by ensuring that the board has the opportunity and means to deliberate and decide the matter in a timely fashion.

#### *Section 611.1160 Appointment of receiver.*

The regulation describes the procedure by which a receiver is appointed by the FCA to take control of an association. Notice of the appointment shall be provided to the institution and the district bank and shall be published in the **Federal Register**. All rights, privileges and powers of the board of directors, officers, and employees of the association are vested exclusively in the receiver and those persons are suspended except as provided for in the case of a voluntary liquidation of a solvent association. In the latter case, the board of directors of the association may, at the discretion of the Chairman of the FCA, remain in office to provide advice to the receiver during the liquidation.

A group of attorneys general from six Midwestern States (attorneys general) expressed concern that the regulations do not adequately minimize the adverse impact of a liquidation on borrowers. They specifically objected to the absence of a requirement for personal notice to the borrowers of an institution placed in liquidation. The attorneys general noted that the proposed regulations regarding appointment of a conservator in § 611.1180(b) do provide for personal notice for borrowers and stated there is no reason why the appointment of receivers should be handled differently. They believe it is even more important for borrowers to be aware of a pending liquidation in order to arrange their affairs and minimize the impact of a liquidation. They suggested that personal notice should be given to

borrowers prior to a receiver's accepting appointment and more probably as soon as a decision to appoint a receiver is made.

The FCCA expressed concern that § 611.1160(d) can be interpreted as prohibiting a receiver from re-employing officers and employees of an association during the liquidation. The FCCA believes such action is clearly authorized in § 611.1161 and should be acknowledged in this section. The FCCA also reiterated its comment made in § 611.1157(a) regarding the reinstatement of an institution's board of directors following the termination of a receivership.

The comment by the attorneys general regarding the need for a notification to stockholder-borrowers upon the appointment of a receiver apparently arises out of a misunderstanding of the nature of the proposed amendments to the liquidation regulations. The proposed regulations only amend §§ 611.1160, 1161, 1165, and 1167 of existing FCA regulations found in Subpart L. The proposed regulations do not amend § 611.1163, which specifically provides for notice to all stockholders of an institution placed in liquidation. The FCA Board believes that this section in the existing regulation contains exactly the type of notice provision sought by the attorneys general.

The Board agrees with the comment of the FCCA regarding the authority of the receiver to employ a person who had served as an officer or director of an institution and amends § 611.1160(d) to clarify that point.

The Board disagrees with the FCCA comment regarding the reinstatement of boards of directors for the same reasons set forth in response to the comments on § 611.1157.

#### *Section 611.1161 Powers and duties of the receiver.*

The proposed regulation describes the authorities and responsibilities of the receiver of an association and provides that the receiver conducts the operations of an association for the benefit of its creditors and stockholders. Among the authorities of the receiver are the power to take any action the receiver considers appropriate or expedient to carry on the business of the association during liquidation and the power to institute, maintain, intervene, and participate in the name of the association in any legal proceeding by or against the association in which the association, its creditors, or its members have any interest, and to represent same.

The attorneys general group objected to the provision authorizing the receiver to take action that he or she considers appropriate or expedient to carrying on the business of the association during liquidation. The group argued that this provision gives unreasonably broad discretion to a receiver and is inconsistent with the requirement that the adverse impact of a liquidation on borrowers be minimized. The attorneys general suggested that language should be amended to ensure that the receiver does not violate the borrowers' rights provided for in the Act and related regulations.

The FCCA objected to language in § 611.1161(h) which provides that the receiver shall "represent in every way the association, its members, and creditors." It argued that a receiver cannot possibly represent all the interests of the varied parties. The FCCA recommended that the regulation be amended to provide that the receiver shall represent the interests of the association alone.

The two comments received on this regulation do not relate to matters that were amended by the proposed regulation. Rather, the two comments relate to language that was in the FCA receivership regulations as approved in 1985 and as published in the current version of the CFR. Similar provisions are contained in the receivership regulations of other banking agencies. See 12 CFR 548.2 (a), (f).

The attorneys general are apparently concerned that this section gives the receiver the authority to take actions which are not authorized by the Act or other applicable laws, or contracts entered into by the institution. Such is clearly not the case. The section merely gives the receiver the same authorities that all receivers of any type of institution have and clarifies that, subject to existing legal requirements and the supervision of the FCA, the receiver exercises all rights, privileges, and immunities relating to the operation of the institution.

Similarly, the comment by the FCCA appears to be premised on its belief that the regulation authorizes a receiver to take any action the receiver desires involving any conceivable right or interest of a member of the association. Clearly, such is not the case. The regulation simply provides that in the conduct of litigation, the receiver is empowered to represent all of the interests of the institution. Many of the institution's interests are also jointly the interests of its stockholders and creditors. In fact, every collection action brought by an operating association or an association in liquidation is done for

the ultimate benefit and in preservation of the interests of its stockholders and creditors.

#### *Section 611.1162 Preservation of equity.*

This regulation is a current FCA regulation for which no amendments have been proposed by the FCA; however, one comment was received from the FCCA. The regulation provides that capital stock and participation certificates may not be retired during the pendency of a liquidation until all creditors are paid and the receiver makes a final distribution to stockholders. The FCCA believes that in the context of an FLBA liquidation, this provision could cause great hardship to an FLB borrower who has repaid his loan to an FLB that is not itself in receivership. Since each FLBA is not a direct lender but rather operates as an agent of the FLB, it is purely a "pass-through entity" issuing stock to the borrower and making an equivalent investment in the bank. Therefore, unless the FLB is itself in receivership there is no reasonable basis for freezing the borrower's stock in an FLBA. The FCCA suggested that a "conservatorship" would be more appropriate for an FLBA and that members should be able to have their stock retired except when the FLB is in receivership.

The FCCA provided a comment on this regulation even though it was not a regulation included in the group of liquidation regulations subject to amendment. The Board agrees that as a practical matter there would probably be few instances in which an FLBA would be liquidated in the absence of a concurrent liquidation of the FLB. However, in the event of any liquidation of an FLBA, the stock of the association must be preserved to pay the debts of the association prior to a distribution to stockholders. The Board does not believe an amendment to this regulation is necessary.

#### *Section 611.1165 Sale and transfer of loans.*

The regulation authorizes a receiver to sell loans at fair market value, including any amount borrowed to purchase stock in an association, to the Capital Corporation or any commercial lending institution. Additionally, a receiver may sell a loan to an association authorized to make loans in the territory previously served by the association in liquidation. When an association purchases a loan offered for sale by a receiver the borrower must agree to buy stock in and become a member of the "new" association.

All the comments received on this regulation relate to matters in the proposed regulations which are unchanged from current FCA receivership regulations.

A North Dakota farmers' organization questioned whether there was a conflict between §§ 611.1165(b)(1) and 611.1165(c). The organization commented that paragraph (b)(1) appears to require the purchase of capital stock in a purchasing association while paragraph (c) provides that an association may purchase a loan only when the borrower agrees to buy stock in and become a member of the association.

The attorneys general group stated that the regulation does not fulfill the intent of Congress because it does not contain provisions that minimize the adverse impact of liquidations on borrowers. The group recommended that the FCA should direct institutions to liberalize the financing of loans that are sold, for example, by providing an extended time period during which borrowers can purchase stock in the new association.

The FCCA suggested that the regulation be amended to avoid a potential double payment by a borrower of the amount borrowed to purchase stock where a borrower's stock has previously been retired and applied against an outstanding loan before the association was placed in receivership.

In response to the comment by the farmers' organization, the Board does not believe there is any conflict between the two paragraphs. Paragraph (b) sets forth the procedures associated with the sale of a loan to a neighboring association. The regulation requires, among other things, that in order for a loan to be sold to a neighboring association the borrower must become a stockholder of such association in accordance with the normal requirements of the Act. Failure to include this requirement would, of course, completely nullify the entire purpose of stock purchases and would eliminate the value of stock as an available source of capital for the payment of the debts of the association to its creditors. Paragraph (c) provides that the purchasing association has 90 days to make a determination whether or not to accept loans. If an association would otherwise accept a loan, but the borrower refuses to become a member of the new association, the association must return that loan to the liquidating association. This latter provision was specifically placed in the final regulation adopted by the FCA in 1985 following a comment by an interested party that the

regulations needed to clarify that each borrower has the option of refusing to have his loan transferred to a neighboring association.

In response to the attorneys general comment, the proposed regulations continue, unchanged, the provisions in the current FCA receivership regulations that authorize banks to provide interest-free loans to stockholders for the purchase of stock in a neighboring association. In liquidations where banks have had the financial capacity to offer these interest-free loans, it has enabled loans to be transferred from an association in receivership to a neighboring association with no immediate out-of-pocket expense to the borrower. Under the programs which have been used, the borrower continued to pay interest on any outstanding loan for the purchase of stock in the association in liquidation, but would not incur an interest expense on a loan to purchase stock in the new association. Following the final distribution of assets from the liquidating association or 5 years, whichever is sooner, the borrower is then required to pay interest on any funds borrowed to purchase stock in the purchasing association. These provisions cannot be made mandatory because in many instances the bank may not have the financial capacity to make such interest-free loans.

The Board believes these provisions fully carry out the intent of Congress by establishing a reasonable and financially practical method by which the impact of a liquidation on individual borrowers can be minimized while at the same time not endangering the financial integrity of the bank and other associations in a district. While this provision has been unchanged from current FCA regulations, the Board has amended the regulation to specifically include a reference to the authority for the bank to provide such loans at no interest or at a reduced rate of interest.

In response to a recommendation by the FCCA the Board made a technical amendment to § 611.1165(a).

*Section 611.1167 Inventory, examination, audit, and reports to stockholders.*

The regulation provides for the following: An inventory of the assets and liabilities of the institution by the receiver; examination of the institution by the FCA; audit of the institution by the FCA or, at its discretion, an independent CPA; and periodic financial reporting to the FCA and stockholders.

The System accountant suggested that the institution in receivership should be required to meet all financial reporting rules set forth in FCA regulations. In

addition, the accounting firm suggested that such institutions should also be required to report at least quarterly to the FCCA so that the System and the banks can prepare combined financial statements on a timely basis. The FCCA suggested that the regulation be amended to require that copies of such reports are provided to the district bank. The FCCA stated that such reports are necessary in order to prepare accurate Systemwide, district bank, and individual bank financial statements. The FCCA also recommended that the regulation provide for annual stockholder meetings for associations in receivership during which the receiver could present the annual report and stockholders would have an opportunity to ask questions.

The Board agrees with the comments received by the System accountant that institutions in liquidation are required to meet financial reporting rules set out in FCA regulations. However, since the reporting and disclosure requirements contained in 12 CFR Parts 620 and 621 include numerous provisions which are applicable to "going concerns," rather than institutions in liquidation, all of the provisions in those regulations cannot be made applicable to institutions in receivership.

The proposed regulation did not contain specific reporting and disclosure requirements because the FCA had not completed the process of promulgating disclosure and reporting requirements for System institutions. Those disclosure and reporting regulations have now been finalized and, accordingly, the Board has amended this section to include references to specific quarterly and yearend financial reporting requirements and disclosure requirements to stockholders that apply to institutions in receivership. The requirements relating to the distribution of financial reports of institutions in receivership are the same as the requirements applicable to other System institutions.

The Board does not agree with the recommendation that the proposed regulations be amended to include a requirement for annual stockholder meetings. The primary purpose of stockholder meetings is to elect directors for the institution. An association in receivership is under the control of a receiver who is exercising authority in accordance with the FCA regulations and as agent of the FCA. Stockholders who have questions about the operations of the association can direct their inquiries at any time they deem appropriate to the receiver or the FCA.

*Section 611.1170 Appointment of receiver.*

The regulation provides that upon appointment of a receiver for a bank, all rights, powers, and privileges of the board, officers, and employees are vested exclusively in the receiver and such individuals are suspended except as provided in the case of a voluntary liquidation under paragraph (g). The FCCA restated the comment it made regarding § 611.1160, that the regulation should clarify that a receiver is authorized to re-employ officers and employees of the bank for purposes of assisting in its liquidation. In addition, the FCCA stated, for the same reasons cited in its comment to § 611.1157(a), if the FCA elects to terminate a receivership, the authority of the board of directors should be reinstated.

For the same reasons discussed with respect to § 611.1160, the Board has amended this section to clarify that the receiver has the authority to employ persons who previously served as officers or employees of the bank before it was placed in liquidation.

For the same reason discussed in connection with § 611.1160, the Board does not believe the regulations should be amended to provide that in the case a receivership is terminated, the prior board of directors is reinstated.

*Section 611.1175 Inventory, examination, audit, and reports to stockholders.*

This section directs receivers to prepare and file periodic reports with the FCA covering various matters relating to the receivership. The FCCA recommended that the regulation be amended to require receivers to make regular reports to bank stockholders. They argued that the stockholders of a bank in receivership have just as much interest in the status of the receivership as the borrowers/stockholders of liquidating associations and that bank stockholders require current and accurate financial information concerning the receivership in order to prepare their own financial statements. In addition, the FCCA restated its comments to § 611.1167 relating to regular stockholder meetings during the pendency of a receivership and a requirement that the receiver provide timely, quarterly financial information to the FCCA. The System accountant concurred with the FCCA with respect to requiring the receiver to file financial reports with the FCCA so that the banks can provide combined financial statements on a timely basis.

The Board agrees with the FCCA comment regarding the need for reports to the associations or cooperatives that are stockholders of a bank in receivership and has amended the regulation to include a provision comparable to the stockholder reporting provision contained in § 611.1167(d).

For the same reasons discussed with respect to § 611.1167, the Board does not believe the regulation should be amended to include a requirement for annual stockholder meetings.

The Board concurs with the recommendation that the regulation be amended to specifically require the receiver to file copies of financial reports with the FCCA and has amended the regulation accordingly. This requirement is appropriate in light of the new responsibility of the FCCA to assemble Systemwide financial information.

#### *Section 611.1180 Appointment of a conservator.*

The proposed regulation provides the grounds for and procedures applicable to the appointment of a conservator for a System bank, association, or service organization; the authority of the Chairman of the FCA to terminate a conservatorship and remove the conservator and turn over management of the institution to such individuals as the Chairman may direct; the vesting of the institution's powers exclusively in the conservator; and subjecting the conservator to the direction and supervision of the FCA.

The FCCA restated the comment made to § 611.1157 regarding the authority of the Chairman to direct the conservator to turn over management of the institution to such persons as the Chairman may direct. The FCCA also suggested that § 611.1180(c) should be clarified to avoid unnecessary disruption to an institution by providing that existing officers and employees should be deemed approved to continue their activities subject to the direction of the conservator unless and until the FCA provides notification to the conservator to the contrary. In addition, the FCCA requested clarification of whether a conservator has the same immunity from personal liability as a receiver.

The FCCA correctly noted that under the conservator regulations the officers and employees of the institution are not immediately suspended from their employment upon the appointment of the conservator. Rather, while the conservator is vested with the authorities of the board of directors, officers, and employees, existing officers and employees would remain in their

positions unless and until advised by the conservator that their services were no longer required. The Board concurs with the recommendation for a clarification of this point and has amended § 611.1180(c) accordingly.

In response to the comment by the FCCA regarding the status of FCA conservators, the Board notes that it was the intent of the conservatorship regulations to provide the conservator with the same agent status and the immunities as an agent of the FCA as are specifically provided for with respect to FCA receivers. Accordingly, the Board has amended § 611.1181 by adding a new paragraph (a) which contains language substantially the same as is contained in §§ 611.1161 and 611.1171.

#### *Section 611.1181 Powers and duties of conservators.*

The proposed regulation grants conservators various powers to operate an institution, but provides that certain of those authorities are subject to the prior approval of the FCA. In addition, the regulation provides that in the case of litigation, the conservator shall represent the interest of the institution, its stockholders and creditors. The FCCA stated that if prior FCA approval is required in each instance provided for in the regulation, the conservator will have difficulty exercising his responsibilities. The FCCA also restated its comment regarding § 611.1161 that a conservator cannot represent all interests of shareholders, creditors, and the institution.

As discussed above with respect to § 611.1180, the Board added a new paragraph (a) relating to the status of the conservator of this section, which parallels comparable provisions contained in the receivership regulations. The Board does not believe any changes should be made to the prior approval requirements in this regulation. These prior approval requirements, which are similar to the requirements contained in the FHLBB regulations, serve a very useful purpose. A conservatorship, unlike a receivership, is generally intended to operate for a relatively short period of time, during which the operations of the institution can be stabilized and a more permanent solution for its condition can be determined. In the interim, the FCA must maintain close control over the operations of the institution. While many activities require the prior approval of the FCA, the FCA will establish guidelines for the operations of conservatorships which will provide approvals for classes and categories of activities. Those categories will

establish threshold limits under which a preapproval is granted subject to monitoring and reporting requirements.

#### *Section 611.1182 Inventory, examination, audit, and reports to stockholders.*

The regulation requires the examination and audit of the institution and the filing of periodic reports with the FCA. The FCCA interpreted these regulations to require that the disclosure, reporting, and stockholder meeting requirements applicable to ongoing institutions would be applicable to institutions in conservatorship. The FCCA stated that in the event its interpretation was not correct, it recommended the same changes that were suggested with respect to §§ 611.1167 and 611.1175, relating to the financial reporting requirements and stockholder meetings. The System accountant also restated its comments from §§ 611.1167 and 611.1175, relating to financial reporting requirements.

The FCCA is incorrect in its assumption that the financial reporting and stockholder meeting requirements applicable to other System institutions would apply to institutions in conservatorships in accordance with these regulations. The proposed regulations provide that the specific reporting procedures regarding an institution in conservatorship shall be established by the FCA. For the same reasons discussed with respect to § 611.1167, the Board has amended the regulation to include reporting requirements similar to those contained in §§ 611.1167 and 611.1175, with appropriate modifications to reflect the differences between receiverships and conservatorships. These reports are necessary in order to assure that each district, and the System as a whole, can compile accurate and complete financial statements.

The regulations do not require annual stockholder meetings since the primary reason for a stockholder meeting, the election of directors, does not exist during the pendency of the conservatorship. The conservator does have the authority at his discretion or at the direction of the FCA to hold informational stockholder meetings in order to apprise the members of the bank or association of the current status or upcoming developments relating to the institution. However, in most instances such information can be imparted to stockholders in written form and therefore, there is no necessity for the regulations to require stockholder meetings.

**List of Subjects in 12 CFR Part 611**

Accounting, Agriculture, Archives and records, Banks, Banking, Credit, Government securities, Investments, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations, be amended as follows:

**PART 611—ORGANIZATION**

1. The authority citation for Part 611 is revised to read as follows:

Authority: Secs. 1.13, 2.10, 4.11, 4.12, 4.28A-4.28L, 5.9, 5.10, 5.15, and 5.17, Pub. L. 99-205, 99 Stat. 1678.

**Subpart F—General Rules for Districts**

2. Section 611.1090 is revised to read as follows:

**§ 611.1090 Request for district changes—general.**

(a) A district board in its capacity as the board of an individual bank or as the board of all banks in a district, as appropriate, may recommend the following actions:

(1) The merger of one or more banks in the district with one or more like banks in another district;

(2) The transfer of territory between one or more banks in the district and one or more like banks in another district; and

(3) A change in the name of a district.

(b) Upon approval of an appropriate resolution by the district board, the resolution, together with supporting documentation, shall be submitted to the Farm Credit Administration for preliminary approval. Following the receipt of written notification of preliminary approval by the Farm Credit Administration, the proposal shall be submitted for approval by a majority vote of the Federal land bank associations, production credit associations, and cooperatives that are stockholders of the banks involved. Upon approval by the stockholders, the proposal shall be submitted to the Farm Credit Administration for final approval and issuance of amendments to the charters of the institutions involved. A proposed change in the name of a district does not require stockholder approval.

**§ 611.1115 [Removed]**

3. Section 611.1115 is removed.

**Subpart G—Mergers, Consolidations, and Charter Amendments of Associations**

4. Section 611.1121 is amended by revising paragraphs (b), (c), and (d) and

the introductory text to the section to read as follows:

**§ 611.1121 Charter amendment procedures.**

This section shall apply to any request by an association to amend its charter.

(b) Upon receipt of a proposed amendment from an association, the district bank shall review the materials submitted and provide the association with its analysis of the proposal within a reasonable period of time. Concurrently, the bank shall communicate its recommendation on the proposal to the Farm Credit Administration, including the reasons for the recommendation, and any analysis the bank believes appropriate. Following review by the bank, the association shall transmit the proposed amendment with attachments to the Farm Credit Administration.

(c) Upon receipt of an association's request for a charter amendment, the Farm Credit Administration shall review the materials submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate.

(d) The Farm Credit Administration shall notify the association of its approval or disapproval of the amendment request, and provide a copy of such communication to the bank. A notification of approval shall be accompanied by a copy of the charter, as amended.

5. Section 611.1122 is amended by revising paragraphs (a) introductory text, (a)(3), (b), (c), (e) introductory text, (e)(4), (9), and (i) to read as follows:

**§ 611.1122 Requirements for mergers or consolidations.**

(a) Where two or more associations plan to merge or consolidate, or where the district board has adopted a reorganization plan for the associations in the district, the associations involved shall jointly submit a request to the district bank containing the following:

(3)(i) A certified copy of the resolution of the board of directors of each association recommending approval of the merger or consolidation; or

(ii) In the case of a district reorganization plan, a certified copy of the resolution of the board of directors of each association recommending either approval or disapproval of the proposal.

(b) Upon receipt of a request for approval of an association merger or consolidation, the district bank shall review the materials submitted to determine whether they comply with the requirements of these regulations and shall communicate with the associations concerning any deficiency. When the bank approves the request to merge or consolidate it shall notify the associations and the Farm Credit Administration of its approval together with the reasons for its approval and any supporting analysis the bank deems appropriate. The associations shall jointly submit the proposal together with required documentation to the Farm Credit Administration for preliminary approval.

(c) Upon receipt of an association merger or consolidation request, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the associations and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be given to the associations and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the merger or consolidation. Approval of a merger or consolidation shall be only pursuant to paragraph (9) of this section.

(e) Notice of the meeting to consider and act upon a proposed merger or consolidation of associations shall be accompanied by the following information covering each constituent association.

(4) A brief statement by the boards of directors of the constituent associations setting forth the basis for the boards' recommendation on the merger or consolidation.

(g) Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the Farm Credit Administration. The merger or consolidation shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the bank.

(i) The notice and accompanying information required under paragraph (e) of this section shall not be sent to stockholders until preliminary approval of the merger or consolidation has been given by the Farm Credit Administration.

6. Section 611.1123 is amended by revising paragraphs (a) introductory text and (a)(7) to read as follows:

**§ 611.1123 Merger or consolidation agreements.**

(a) Associations operating under the same title of the Act may merge or consolidate voluntarily only pursuant to a written agreement. The agreement shall set forth all of the terms of the transaction, including, but not limited to, the following:

(7) A statement that the board of directors of each constituent association can terminate the agreement before the effective date upon a determination by an association, with the concurrence of the Farm Credit Administration, that:

- (i) The information disclosed to stockholders contained material errors or omissions;
- (ii) Material misrepresentations were made to stockholders regarding the impact of the merger or consolidation;
- (iii) Fraudulent activities were used to obtain stockholders' approval; or
- (iv) An event occurred between the time of the vote and the merger that would have a significant adverse impact on the future viability of the continuing institution.

7. Section 611.1124 is revised to read as follows:

**§ 611.1124 Territorial adjustments.**

This section shall apply to any request submitted to the Farm Credit Administration to modify association charters for the purpose of transferring territory from one association to another.

(a) Territorial adjustments, except as specified in paragraph (m) of this section, require approval of a majority of the voting stockholders of each association present and voting or voting by written proxy at a duly authorized meeting at which a quorum is present.

(b) When two or more associations agree to transfer territory, each association shall submit a proposal to the district bank containing the following:

(1) A statement of the reasons for the proposed transfer and the impact the transfer will have on its stockholders and holders of participation certificates;

(2) A certified copy of the resolution of the board of directors of each association approving the proposed territory transfer;

(3) A copy of the agreement to transfer territory that contains the following information:

(i) A description of the territory to be transferred.

(ii) Transferor association's plan to transfer loans and the types of loans to be transferred.

(iii) Transferor association's plan to retire and transferee association's plan to issue equities held by holders of stock, participation certificates, and allocated equities, if any, and a statement by each association that the book value of its equities is at least equal to par.

(iv) An inventory of the assets to be sold by the transferor association and purchased by the transferee association.

(v) An inventory of the liabilities to be assumed from the transferor association by the transferee association.

(vi) A statement that the holders of stock and participation certificates whose loans are subject to transfer have 60 days from the effective date of the territory transfer to inform the transferor association of their decision to remain with the transferor association for normal servicing until the current loan is paid.

(vii) A statement that the transfer is conditioned upon the approval of the stockholders of each constituent association.

(viii) The effective date of the proposed territory transfer.

(4) A copy of the stockholder disclosure statement provided for in paragraph (f) of this section; and

(5) Any additional relevant information or documents that the association wishes to submit in support of its request or that may be required by the Farm Credit Administration.

(c) Upon receipt of documents supporting a proposed territory transfer, the district bank shall review the materials submitted and provide the associations with its analysis of the proposal within a reasonable period of time. The bank shall concurrently advise the Farm Credit Administration of its recommendation regarding the proposed territory transfer. Following review by the bank, the associations shall transmit the proposal to the Farm Credit Administration together with all required documents.

(d) Upon receipt of an association's request to transfer territory, the Farm Credit Administration shall review the request and either deny or give preliminary approval to the request. When a request is denied, written notice

stating the reasons for the denial shall be transmitted to the associations, and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be transmitted to the associations, and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the territory transfer. Final approval shall be granted only in accordance with paragraph (h) of this section.

(e) Upon receipt of preliminary approval by the Farm Credit Administration, each constituent association shall, by written notice, and in accordance with its bylaws, call a meeting of its voting stockholders. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a territory transfer.

(f) Notice of the meeting to consider and act upon a proposed territory transfer shall be accompanied by the following information covering each constituent association:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

**THE FARM CREDIT  
ADMINISTRATION HAS NEITHER  
APPROVED NOR PASSED UPON THE  
ACCURACY OR ADEQUACY OF THE  
INFORMATION ACCOMPANYING  
THE NOTICE OF MEETING OR  
PRESENTED AT THE MEETING AND  
NO REPRESENTATION TO THE  
CONTRARY SHALL BE MADE OR  
RELIED UPON.**

(2) A copy of the Agreement to Transfer Territory and a summary of the major provisions of the Agreement.

(3) The reason the territory transfer is proposed.

(4) A map of the association's territory as it would look after the transfer.

(5) A summary of the differences, if any, between the transferor and transferee associations' interest rates, interest rate policies, collection policies, service fees, bylaws, and any other items of interest that would impact a borrower's lending relationship with the institution.

(6) A statement that all loans of the transferor association that finance operations located in the transferred territory shall be transferred to the transferee association except as otherwise provided for in this section or in accordance with agreements between

the associations as provided for in § 614.4070 of this chapter.

(7) Where proxies are to be solicited a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholders.

(8) A statement that the associations' bylaws, financial statements for the previous 3 years, and any financial information prepared by the associations concerning the proposed transfer of territory are available on request to the stockholders of any association involved in the transaction.

(g) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with a territory transfer.

(h) Upon approval of a proposed territory transfer by the stockholders of the constituent associations, a certified copy of the stockholders' resolution for each constituent association and one executed Agreement to Transfer Territory shall be forwarded to the Farm Credit Administration. The territory transfer shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the bank.

(i) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a Preliminary or final approval by the Farm Credit Administration of a territory transfer constitutes, directly or indirectly, a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(j) The notice and accompanying information required under paragraph (f) of this section shall not be sent to stockholders until preliminary approval of the territory transfer has been granted by the Farm Credit Administration.

(k) Where a territory transfer is proposed simultaneously with a merger or consolidation, both transactions may be voted on by stockholders at the same meeting. Only stockholders of a transferee or transferor association shall vote on a territory transfer.

(l) Each borrower whose real estate or operations is located in a territory that will be transferred shall be provided with a written Notice of Territory

Transfer immediately after the Farm Credit Administration has given final approval of the territory transfer. The Notice shall inform the borrower of the transfer of the borrower's loan to the transferee association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities shall be offered that will not adversely affect the interest of the owner. The Notice shall give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit shall be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with § 614.4070 of this chapter.

(m) This section shall not apply to territory transfers initiated by order of the Chairman of the Farm Credit Administration or to territory transfers due to the liquidation of the transferor association.

(n) Where a proposed action involves the transfer of a portion of an association's territory to an association operating in a different district, such proposal must comply with the provisions of this section and § 611.1090 of this part.

8. Section 611.1125 is revised to read as follows:

**§ 611.1125 Treatment of associations not approving districtwide mergers.**

(a) Issuance of charters. When issuing charters or certificates of territory for districtwide mergers or consolidations of associations, the Farm Credit Administration will not issue any charters or certificates of territory that include the territory of one or more associations whose stockholders voted to disapprove the merger or consolidation.

(b) A district bank shall not take any of the following actions with respect to an association that has determined to not participate in a districtwide merger or consolidation:

(1) Discriminate in the provision of any financial service and assistance, including, but not limited to, access to loan funds and rates of interest on loans and discounts offered by the district bank to associations and their member/borrowers;

(2) Discriminate in the provision of any financially related services that are offered by the district bank to

associations and their member/borrowers;

(3) Discriminate in the provision of any professional assistance that may be normally provided by the district bank to associations; or

(4) Discriminate in the provision of any technical assistance that may be normally provided by the district bank to associations.

(c) This regulation does not prohibit a district bank from taking any action with respect to an association, including, but not limited to, charging different rates of interest or different prices for services, or declining to provide financial assistance; provided that any such action is fully documented and based on an objective analysis of applicable criteria that are uniformly and consistently applied by the district bank to all associations in the district.

9. Part 611 is amended by adding Subpart K, Appointment of Conservators and Receivers, to read as follows:

**Subpart K—Appointment of Conservators and Receivers**

Sec.

611.1155 General.

611.1156 Grounds for appointment of conservators and receivers.

611.1157 Conservators and receivers.

611.1158 Actions for removal of conservator or receiver.

**Subpart K—Appointment of Conservators and Receivers**

**§ 611.1155 General.**

The Farm Credit Administration has exclusive authority to appoint conservators or receivers for System institutions and to establish the procedures under which conservatorships and receiverships are operated. This subpart sets forth the basis for the appointment of conservators and receivers and establishes general guidance for the operations of conservatorships and receiverships. Subparts L and M of this part set forth the specific powers and procedures for receivers of associations and banks, respectively. Subpart N of this part sets forth the powers and procedures applicable to conservatorships of banks and associations.

**§ 611.1156 Grounds for appointment of conservators and receivers.**

(a) Upon a determination by the Farm Credit Administration of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm

Credit Administration may, at its discretion, appoint a conservator or receiver for such institution.

(b) The grounds for the appointment of a conservator or receiver for a System institution are:

(1) The institution is insolvent. For purposes of this paragraph, "insolvent" means that the assets of the institution are less than its obligations to its creditors and others, including its members. A determination of insolvency is made when an examination conducted or adopted by the Farm Credit Administration reveals that the capital stock or participation certificates of an institution are worth less than their par or stated value;

(2) There has been a substantial dissipation of the assets or earnings of the institution due to the violation of any law, rule, or regulation, or the conduct of an unsafe or unsound practice;

(3) The institution is in an unsafe or unsound condition to transact business;

(4) The institution has committed a willful violation of a final cease-and-desist order issued by the Farm Credit Administration; or

(5) The institution is concealing its books, papers, records, or assets, or is refusing to submit its books, papers, records, assets, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration.

#### **§ 611.1157 Conservators and receivers.**

(a) A Farm Credit Administration conservator is appointed by the Chairman of the Farm Credit Administration pursuant to section 4.12(b) of the Act and § 611.1156 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, a conservator shall direct the institution's further operation until the Farm Credit Administration decides whether to liquidate the institution. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration that the institution can be returned to normal operations, the Farm Credit Administration may turn the institution over to such management as the Farm Credit Administration may direct. A conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in Subpart N of this part.

(b) A Farm Credit Administration receiver is appointed by the Chairman of the Farm Credit Administration pursuant to section 4.12(b) of the Act and § 611.1156 of this part to take possession of a System institution in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to its stockholders. A receiver shall exercise all powers necessary to the efficient termination of an institution's operation, as provided for in Subparts L and M of this part.

#### **§ 611.1158 Action for removal of conservator or receiver.**

Upon the appointment of a conservator or receiver to a System institution by the Farm Credit Administration, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration to remove such conservator or receiver. Notwithstanding any other provisions of Subparts L, M, or N of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may only be authorized by such institution's board of directors.

#### **Subpart L—Liquidation of Associations**

10. Section 611.1160 is revised to read as follows:

#### **§ 611.1160 Appointment of receiver.**

(a) The board of directors of an association, by the adoption of an appropriate resolution, may vote to liquidate the association, and upon approval of the resolution by the Farm Credit Administration after consultation with the supervisory bank, the Chairman by order may place the association in receivership and appoint a receiver.

(b) The Farm Credit Administration may, at its discretion, appoint a receiver for any System association in accordance with the grounds for appointment set forth in § 611.1156 of this part.

(c) Upon the appointment of a receiver and acceptance by the receiver of the appointment, the Chairman shall immediately notify the institution and its district bank and notice of the

appointment shall be published in the Federal Register.

(d) Upon the issuance of the order placing an association in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the association are vested exclusively in the receiver, and said individuals are suspended except as provided for in paragraph (9) of this section. Persons who were serving as officers or employees may be employed by the receiver in accordance with § 611.1161 of this part.

(e) The voluntary or involuntary liquidation of an association shall be conducted by the receiver as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, and paying any liquidating dividend to stockholders of the association. Upon completion of the liquidation and discharge of the receiver by the Farm Credit Administration, the Chairman will cancel the charter of the association.

(f) The Chairman may at any time remove or replace the receiver or may terminate the receivership and direct the receiver to turn over the association to its previous management or such other management as the Chairman may order, in which event the provisions of this subpart shall no longer apply.

(g) In the case of the voluntary liquidation of an association where grounds for the appointment of a receiver pursuant to § 611.1156 of this part do not exist, the Chairman may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating association. The board of directors of the association may, at the discretion of the Chairman, remain in office to provide advice and recommendations to the receiver during the pendency of the liquidation.

11. Section 611.1161 is revised to read as follows:

#### **§ 611.1161 Powers and duties of the receiver.**

The receiver of an association serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the association. In this capacity, as trustee of the estate, the receiver is an agent of and is subject to the specific procedures and approval requirements established by the Farm Credit Administration and enjoys the same immunities against personal liability that exist for all employees and agents of the Farm Credit Administration. As the agent of the Farm Credit

Administration and acting on behalf of the association in receivership, the receiver is authorized and empowered to:

(a) Exercise all powers as are conferred upon the officers and directors of the association under law and the charter, articles, and bylaws of the association.

(b) Take any action the receiver considers appropriate or expedient to carry on the business of the association during the process of liquidating its assets and winding up its affairs.

(c) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(d) Borrow such sums as necessary to effectuate the purposes of the receivership.

(e) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the association's assets or property, or rehabilitate or improve such property and assets.

(f) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the association has a lien or in which the association has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(g) Investigate any matter related to the conduct of the business of the association, including, but not limited to, any claim of the association against any individual or entity, and institute appropriate legal or other proceedings in the name of the association to prosecute such claims.

(h) Institute, prosecute, maintain, defend, intervene, and otherwise participate in the name of the association in any legal proceeding by or against the association or in which the association or its creditors or members have any interest, and represent in every way the association, its members, and creditors.

(i) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(j) Hire any employees necessary for proper administration of the receivership, which employees shall be covered by a bond satisfactory to the receiver and the Farm Credit Administration;

(k) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose,

and any instrument executed under this paragraph shall be valid and effectual as if it had been executed by the association's officers by authority of its board of directors.

(l) Sell for cash or otherwise, any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owed to the association, or any property (real or personal, tangible or intangible).

(m) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(n) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(o) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the association or the receiver.

(p) Pay out of the assets of the association, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(q) Pay out of the assets of the association, all approved claims of indebtedness in accordance with priorities established in this subpart.

(r) Take all actions in the name of the association in receivership, and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(s) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration authorizes, directs, confers, or imposes by order or by amendment of any order or by regulation.

12. Section 611.1165 is revised to read as follows:

#### § 611.1165 Sale and transfer of loans.

(a) The receiver is authorized to sell loans, including any amount outstanding that was used to purchase stock or participation certificates of the association, to the Farm Credit System Capital Corporation (Capital Corporation) or to any commercial lending institution at fair market value (including any amount borrowed to purchase stock in the association). All loans not purchased by other System institutions are eligible for purchase by the Capital Corporation.

(b) The receiver is authorized to sell loans to an association (hereafter referred to as "purchasing association")

that has been authorized, by charter amendment, agreement, or otherwise, to make loans in the territory heretofore served by the association in liquidation only on the following basis:

(1) A loan, including any amount outstanding that was used to purchase stock or participation certificates of the association, may be sold at not less than its fair market value (including the amount borrowed to purchase stock or participation certificates in the liquidating association) and the borrower will immediately make the required capital investment in the purchasing association by providing cash sufficient therefor or by increasing the loan by an amount necessary to make such capital investment.

(2) A loan, including any amount outstanding that was used to purchase stock or participation certificates of the association, may be sold at not less than its fair market value in conjunction with an agreement between the borrower, the receiver, the bank, and the purchasing association, which provides for a loan, at no interest or a reduced rate of interest, from the bank to the borrower or the purchasing association in the amount of the required capital investment in the purchasing association, to be repaid on or before the completion of the liquidation of the association, on terms set forth in the agreement.

(c) An association to which the receiver proposes to sell a loan shall have not less than 90 days to purchase the loan. The association may purchase any such loan at its discretion provided that the borrower agrees to buy stock and become a member of the association.

13. Section 611.1167 is revised to read as follows:

#### § 611.1167 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of an association, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken. Such inventory shall include the book value and the fair market value of the association's assets. The method of listing assets must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The association in receivership shall be examined on an annual basis by the Farm Credit Administration. The association shall be audited by the Farm Credit Administration or, at the discretion of the Farm Credit

Administration, by an independent certified public accountant at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

(c) Each association in receivership shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of Part 621 of this chapter with the exception of those provisions that, in accordance with generally accepted accounting principals, are not applicable to an entity that is not considered a "going concern." The receiver of the association shall provide the certification required by § 621.12 of this chapter.

(d) Each association in receivership shall prepare and distribute financial reports in accordance with the provisions of Part 620, Subpart A, of this chapter. The provisions of § 620.3 of this chapter relating to the content of reports shall not be applicable to associations in receivership except as specifically provided for in this paragraph (d). The receiver of the association shall provide the certification required by § 620.2(e) of this chapter and shall provide the signature required by § 620.2(f) of this chapter. Each report shall include:

(1) A discussion of the material events or developments occurring as of the date the association was placed in receivership with a thorough explanation of events or circumstances that have resulted or that may result in material deviations from the plan of liquidation.

(2) A brief description of any material pending legal proceedings, in accordance with § 620.3(c) of this chapter.

(3) A description of the reasons for any changes in independent public accountants used by the receivership, in accordance with § 620.3(1) of this chapter.

(4) A statement of net assets (or liabilities) and a statement of changes in net assets (or liabilities) for each of the last 2 years, and related footnotes. Financial statements and related footnotes shall be prepared in accordance with generally accepted accounting principles for entities not considered "going concerns," and instructions and other requirements of the FCA. The statements shall be audited in accordance with generally accepted auditing standards and shall include an opinion of a qualified public accountant, as defined in § 621.2(a)(21) of this chapter.

(e) Each association in receivership shall prepare and distribute quarterly financial reports in accordance with Subpart B of Part 620 of this chapter, except for § 620.11 of this chapter relating to the content of reports. The receiver of the association shall provide the certification required by § 620.10(d) of this chapter. Quarterly reports shall include:

(1) Information that is presented in accordance with generally accepted accounting principles for interim financial reporting.

(2) Information as provided for in paragraphs (d) (i) and (ii) of this section.

(3) Financial statements as provided for in paragraph (d) of this section, with captions of major components of the financial statements representing not less than 15 percent of the institution's total liabilities.

(f) Upon the final liquidation of the association, the receiver shall cause to be sent to each stockholder of record, a report summarizing the activities of the receiver and describing the disposition of the assets of the receivership and claims against the receivership.

#### Subpart M—Liquidation of Banks

14. Section 611.1170 is revised to read as follows:

##### § 611.1170 Appointment of receiver.

(a) The board of directors of a bank, by the adoption of appropriate resolution, may vote to liquidate the bank, and upon approval of the resolution by the Farm Credit Administration, the Chairman may, by order, place the bank in receivership and appoint a receiver.

(b) The Farm Credit Administration may, at its discretion, appoint a receiver for any System bank in accordance with the grounds for appointment set forth in § 611.1156 of this part.

(c) Upon the issuance of an order placing a bank in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the bank are vested exclusively in the receiver, and such individuals are suspended, except as provided for in paragraph (g) of this section. Persons who were serving as officers or employees may be employed by the receiver in accordance with § 611.1171 of this part.

(d) Upon the appointment of a receiver, and acceptance by the receiver of the appointment, the Chairman shall immediately notify the institution, and notice of the appointment shall be published in the Federal Register.

(e) A voluntary or involuntary liquidation of a bank shall be conducted

by the receiver, as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, paying any liquidating dividend to stockholders, and winding up the affairs of the bank. Upon completion of the liquidation, the Chairman will revoke the charter of the bank.

(f) The Chairman may at any time remove and replace the receiver or may direct the receiver to return the bank to the previous management or such other management as the Chairman may order, in which event the provisions of this subpart shall no longer apply.

(g) In the case of the voluntary liquidation of a bank, where the grounds for the appointment of a receiver pursuant to § 611.1156 of this part do not exist, the Chairman may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating bank. The board of directors may, at the discretion of the Chairman, remain in office to provide advice and recommendations to the receiver during the pendency of the liquidation.

(h) For purposes of this subpart, the term "bank" includes each bank, the Farm Credit System Capital Corporation, and any service organization chartered pursuant to Part D of Title IV of the Act.

15. Section 611.1175 is revised to read as follows:

##### § 611.1175 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a bank, the receiver shall make an inventory of the assets and liabilities of the bank as of the date possession was taken. Such inventory shall include the book value and fair market value of the bank's assets and the book value of the bank's liabilities and any security therefor. The method of listing assets and liabilities must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The bank in receivership shall be examined on an annual basis by the Farm Credit Administration. The bank shall be audited by the Farm Credit Administration or, at the discretion of the Farm Credit Administration, by an independent certified public accountant at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

(c) Each bank in receivership shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of Part 621 of this chapter with the exception of those provisions that, in accordance with generally accepted accounting principles, are not applicable to an entity that is not considered a "going concern." The receiver of the bank shall provide the certification required by § 621.12 of this chapter.

(d) Each bank in receivership shall prepare and distribute financial reports in accordance with the provisions of Part 620, Subpart A, of this chapter. The provisions of § 620.3 of this chapter relating to the content of reports shall not be applicable to banks in receivership except as specifically provided for in this paragraph (d). The receiver of the bank shall provide the certification required by § 620.2(e) of this chapter and shall provide the signature required by § 620.2(f) of this chapter. Each report shall include:

(1) A discussion of the material events or developments occurring as of the date the bank was placed in receivership with a thorough explanation of events or circumstances that have resulted or that may result in material deviations from the plan of liquidation.

(2) A brief description of any material pending legal proceedings, in accordance with § 620.3(c) of this chapter.

(3) A description of the reasons for any changes in independent public accountants used by the receivership, in accordance with § 620.3(1) of this chapter.

(4) A statement of net assets (or liabilities) and a statement of changes in net assets (or liabilities) for each of the last 2 years, and related footnotes. Financial statements and related footnotes shall be prepared in accordance with generally accepted accounting principles for entities not considered "going concerns," and instructions and other requirements of the Farm Credit Administration. The statements shall be audited in accordance with generally accepted auditing standards and shall include an opinion of a qualified public accountant, as defined in § 621.2(a)(21) of this chapter.

(e) Each bank in receivership shall prepare and distribute quarterly financial reports in accordance with Subpart B of Part 620 of this chapter, except for § 620.11 of this chapter relating to the content of reports. The receiver of the bank shall provide the certification required by § 620.10(d) of

this chapter. Quarterly reports shall include:

(1) Information that is presented in accordance with generally accepted accounting principles for interim financial reporting.

(2) Information as provided for in paragraphs (d)(i) and (ii) of this section.

(3) Financial statements as provided for in paragraph (d)(iv) of this section, with captions of major components of the financial statements representing not less than 15 percent of the institution's total liabilities.

(f) Upon the final liquidation of the bank, the receiver shall cause to be sent to each stockholder of record a report summarizing the activities of the receiver and describing the disposition of the assets of the receivership and claims against the receivership.

16. Part 611 is amended by adding a new Subpart N, Conservators and Conservatorships of Banks and Associations, to read as follows:

**Subpart N—Conservators and Conservatorships of Banks and Associations**

Sec.

- 611.1180 Appointment of a conservator.
- 611.1181 Powers and duties of conservators.
- 611.1182 Inventory, examination, audit, and reports to stockholders.
- 611.1183 Final discharge and release of conservators.

**Subpart N—Conservators and Conservatorships of Banks and Associations**

**§ 611.1180 Appointment of a conservator.**

(a) The Farm Credit Administration may appoint ex parte and without notice a conservator for any System institution provided the grounds for appointment as set forth in § 611.1156 exist.

(b) Upon the appointment of a conservator and acceptance by the conservator of the appointment, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the *Federal Register*. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a System institution in

conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservatorship of a System institution shall be conducted by the conservator as agent of the Farm Credit Administration. The conservator, under the direction and supervision of the Farm Credit Administration, shall be responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Chairman.

(e) The Chairman may, at any time, remove or replace the conservator or may terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Chairman may designate, in which event the provisions of this subpart shall no longer apply.

(f) For purposes of this subpart, "System institutions" includes each bank, association, the Farm Credit System Capital Corporation, and the service organizations chartered under Part D of Title IV of the Act.

**§ 611.1181 Powers and duties of conservators.**

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution. In this capacity, as trustee, the conservator is an agent of and is subject to the specific procedures and approval requirements established by the Farm Credit Administration and enjoys the same immunities against personal liability that exist for all employees and agents of the Farm Credit Administration.

(b) The conservator may, with respect to System institutions, exercise the powers that a receiver of an association may exercise under § 611.1161(d), (k), (p), (r), and (s) of this part. The conservator may, with the prior approval of the Farm Credit Administration, exercise the powers that a receiver of a System bank or association may exercise under §§ 611.1161 (i), (j), (l), (n), (o), and (q) and 611.1171 of this part. In interpreting those paragraphs for purposes of this section, the term "conservator" and "conservatorship" shall be read for "receiver" and "receivership," and "institution" shall be read for "association."

(c) The conservator may also, subject to the restrictions contained in this section:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the charter, articles, and bylaws of the institution, except that the conservator may not declare, credit, pay, or otherwise distribute dividends on stock or other equities of a System institution without the prior approval of the Farm Credit Administration;

(2) Pay any sum the conservator deems necessary or advisable to preserve, conserve, or protect the institution's assets or property, or with prior approval of the Farm Credit Administration, rehabilitate or improve such property and assets;

(3) Extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship;

(4) Investigate any matter related to the conduct of the business of the institution including, but not limited to, any claim of the institution against any individual or entity and, under the supervision of the General Counsel of the Farm Credit Administration, institute, prosecute, maintain, defend, intervene, and otherwise participate in legal or other proceedings in the name of the institution in which the institution, its creditors, or stockholders have any interest, and otherwise represent in every way the institution, its creditors, or stockholders;

(5) Purchase or lease, for 1 year or less, property and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the conservatorship, or with the prior approval of the Farm Credit Administration, lease property for greater than 1 year; or

(6) Take any action the conservator considers appropriate or expedient to the continuing operation of the institution subject to the restrictions contained in this section.

**§ 611.1182 Inventory, examination, audit, and reports to stockholders.**

(a) As soon as practicable after taking possession of a Farm Credit System institution the conservator shall, as may be directed by the Farm Credit Administration, make an inventory of the assets and liabilities of the institution as of the date possession was taken. Such inventory shall include the scheduling of the book value and fair market value of the institution's assets and the book value of the institution's liabilities and any security therefrom. The inventory must be in a form acceptable to the Farm Credit Administration and contain such other

information as the Farm Credit Administration may require. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration on an annual basis. The institution shall also be audited by the Farm Credit Administration or at the discretion of the Farm Credit Administration by an independent certified public accountant at such times as the Farm Credit Administration may determine. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the institution in conservatorship unless otherwise ordered by the Farm Credit Administration.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of Part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.12 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of Part 620 of this chapter, provided that the certifications and signatures of the board of directors or management provided for in §§ 620.2(e), 620.3(m)(3), 620.10(d), and 620.20(e) and (f) shall be provided by the conservator of the institution.

**§ 611.1193 Final discharge and release of conservators.**

(a) *Final report.* At such time as the conservator shall be relieved of the conservatorship duties, the conservator shall file with the Farm Credit Administration a detailed report in a form satisfactory to the Farm Credit Administration.

(b) *Discharge.* At such time as the conservator shall be relieved of the conservatorship duties, the Chairman may direct an examination of the institution and/or an audit of the books and records of the institution in connection with the final report of the conservator. The accounts of the conservator shall be approved or disapproved by the Farm Credit Administration and, if approved, the conservator shall thereupon be completely and finally released.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration.

[FR Doc. 20544 Filed 9-11-86; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 6**

[T. D. 86-174]

**Customs Regulations Amendment Concerning Access To Customs Security Areas at Airports**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to require the use and display of a Customs approved identification card, strip, or seal on existing identification cards worn by employees at airports accommodating international air commerce. The changes are necessitated by recent terrorist incidents at foreign airports, and in an effort to prevent similar incidents from occurring at U.S. airports accommodating international arrivals and departures. All Federal, and uniformed State and local law enforcement personnel are excepted from the requirement. The additional identification is required for all non-exempt persons located at, operating out of, or employed by, affected airports, who require access to Customs security areas in order to perform functions associated with their employment. The amendment also requires that an authorized official of the employer attest, in writing, that a background check of employment history and references has been conducted on their affected employees.

**EFFECTIVE DATE:** October 14, 1986.

**FOR FURTHER INFORMATION CONTACT:** Operational Aspects: Charles P. Bartoldus (202-566-2140); Legal Aspects: Ellen McClain (202-566-2482).

**SUPPLEMENTARY INFORMATION:**

**Background**

Various provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), which are made applicable to aircraft by 19 U.S.C. 1644 (49 U.S.C. App. 1509), and § 6.10, Customs Regulations (19 CFR 6.10), provide the statutory authority for Customs officers to control the entry and clearance of aircraft arriving in the U.S. from foreign countries and the inspection of the crew, passengers, baggage, stores, and cargo carried aboard those aircraft. Section 1109 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1509), authorizes the Secretary of the Treasury to designate airports as ports of entry for civil air navigation. Section 582, Tariff Act of 1930, as amended (19