

Farm Credit Administration

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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.

(8) A description of the legal opinions or rulings (including those related to tax matters), if any, that have been obtained or furnished by any party in connection with the proposed transaction. Also, refer to paragraph (a)(5) of this section.

(9) The capitalization plan and capital structure for the new institution and a statement that the capitalization plan shall comply with applicable FCA regulations.

(10) Provision for the employee benefits plan, its subsequent continuation or adaptation by the board of directors of the proposed institution following the merger or consolidation.

(11) A statement of the authority of those persons designated to carry out the terms of the agreement, including the authority to waive provisions of the agreement and to execute any documents necessary to perfect title, on behalf of the constituent associations.

(b) As an attachment to the agreement, set forth those provisions of the charter and bylaws of the continuing or consolidated association which differ from the existing charter or bylaw provisions of the constituent associations.

(c) Stockholders have the right to reconsider the approval of the merger provided that a petition signed by 15 percent of the stockholders eligible to vote of one or more of the constituent institutions is filed with the Farm Credit Administration within 35 days after the date of mailing the notification of the final results of the stockholder vote required under §611.1122(g). The Farm Credit Administration will

review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition complies with the applicable requirements, a special stockholders meeting shall be called by the institution to reconsider the vote. If a majority of the stockholders voting, in person or by proxy, of any one of the constituent institutions that is a party to the merger vote against the merger, the merger shall not take place.

[50 FR 20400, May 16, 1985, as amended at 51 FR 32442, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988]

§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

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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.

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(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 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.

[51 FR 32442, Sept. 12, 1986]

§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