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March 10, 2006

Mr. Gary K. Van Meter
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-509

Re: Proposed Rule; Organization; Termination of System Institution Status
12 CFR Part 611: 71 Federal Register 1704; January 11, 2006.

Dear Mr. Van Meter:

The American Bankers Association (“ABA”) appreciates this opportunity to comment on the Farm Credit Administration’s (“FCA”) proposal to amend its regulations regarding how a Farm Credit System bank or association terminates its FCS charter and becomes a financial institution under another Federal or State chartering authority.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership-which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks-makes ABA the largest banking trade association in the country.

The FCA's stated goals are to clarify requirements, separate review of stockholder disclosure information from review of the termination itself, improve communications and strengthen the role of an institution's directors in the termination process. We note that an FCS entity seeking termination from the System puts the FCA in the complicated position of attempting to protect both the rights of the owner-members of the terminating institution and of the System itself. In certain situations, these interests may be in direct conflict. Thus, it is important that the FCA craft a rule which is neutral toward these interests. We believe this proposed rule fails that test, as it is geared toward protecting the overall System from the potential loss of any one entity in the System to the detriment of the member-owners of any entity seeking termination.

A true “arms-length” regulator would not impose unnecessary hurdles for any institution seeking termination simply to protect the remaining System. To do so harms all members of the System (both those seeking to maximize value by leaving and those who remain since doing so subjects the System and taxpayers to potential greater risk by preserving inefficiencies). Far from being an “arms-length” regulator, the FCA is demonstrating a bias toward protecting the status quo by proposing unnecessary and unjustifiable burdens for an entity seeking to leave the System. A detailed critique of these burdens follows:

611.1211 - Special Requirements: This section states that the FCA may impose special requirements, assessments, analysis, rulings or studies before approving a termination plan of an FCS entity. There is no time limit prescribed, or limitation on the number of requests that FCA might make of an institution. This section leaves open-ended the depth and breadth of demands that the regulator might make of an entity petitioning to leave the System. Clearly, some reasonable limitation in both time and documentation should be established.

611.1230 - FCA Review and Approval - Plan of Termination. While we agree with the FCA that separating the review of disclosure of termination information and review of the termination itself is logical, we do have serious concerns about the FCA's ability to delay the termination process by determining, without limit, when the disclosure process is complete. In regard to disclosure information provided by the terminating institution, there should be a reasonable cut off point at which time the institution can move forward. This would not prohibit the institution from making additional disclosures or declarations, but it would prevent the FCA from delaying or stalling the process by requiring an unending level of information before a termination disclosure plan is deemed "complete".

With regard to approval of both the termination plan and the termination itself, the FCA notes that they retain the right to deny a termination if it has a materially adverse impact on the rest of the System (even though the proposed rule eliminates this as a specified reason for denial). We have great concern that "materially adverse impact" is in no way quantified in the proposed rule. What is materially adverse? FCA needs to set forth in a rule, and make available for public comment, what level of impact - financial, administrative, etc. it would consider to be material.

611. 1235 - Plan of Termination: Another unnecessary hurdle the FCA seeks to establish in the proposed rule is a requirement that an institution seeking termination have its board vote on the termination again after FCA approval of a plan. This is a needless and potentially costly additional step imposed by the regulator. If an institution's board has voted to send a plan to the FCA and that plan has been accepted (even in a modified form - which would require action by the institution subject to board approval) then the plan should be allowed to be presented to the shareholders with no additional steps. To require another vote of the board is simply a burden to slow or derail the process of termination. Similarly, the increase in the review period for shareholders from 30 to 45 days is a needless delay. Thirty days is certainly sufficient for shareholders to review and question any termination plan.

611.1240 - Voting record date and stockholder approval: The proposed rule would set the vote on termination by stockholders at least 60 days after FCA approval of the plan (as opposed to the existing rule which is not less than 60 days). This is another example of imposing unnecessary delay in the process which may harm those seeking termination. Once a plan has been set forth and stockholders have been informed and given opportunity to question the proposal, a vote should be held. Requiring additional delay only slows the process.

Perhaps the most egregious hurdle in the proposed rule is the requirement that at least 30 percent of voting stockholders be present (in person or by proxy) at a required meeting concerning termination. There is no analog to this requirement in a corporate setting and to impose one on a System institution is excessively burdensome and illogical. Given that many of the System's shareholders live in remote and rural areas, travel to such a meeting would be costly and difficult and many shareholders may choose not to participate by proxy - and they should not be required to do so. It is appropriate for the regulator to insist that a complete and accurate termination plan be adequately communicated to the shareholders. It is not appropriate for the regulator to insist that any number of those shareholders be required to participate in a meeting or vote on the plan. This same criticism of the 30% proxy requirement stands for both initial meetings and any reconsideration as proposed in 611.1245.

611.1247 - FCA Review and Approval -Termination: The proposal leaves FCA with a very broad authority to reject termination. There is no time limit set for approval or disapproval. The rule should, at a minimum, establish that FCA set forth any criteria being used to reject a termination and especially in the case of a termination in which the FCA approved a plan and the stockholders voted to accept that plan. Because the FCA has numerous options for maintaining FCS services in the territory of a terminating association, the grounds for rejecting a termination plan already approved by an association's owners should be extremely restricted. The FCA should be required to set forth for public notice and comment its potential reasons for rejecting a termination before doing so.

For the reasons stated above we urge the FCA to withdraw this deeply flawed rule and to re-propose a rule which is in the best interests of the member-owners of the System, taxpayers, and the broad public interest. Such a rule will recognize that an entity may seek to exit the System to become more competitive and that it may result in additional members leaving the System to maximize their own competitiveness. Such a rule should not seek to preserve the status quo but should encourage innovation, competition and better service to all rural Americans.

Again, thank you for the opportunity to comment on this important proposal. If you have questions or concerns or would like to discuss this in greater detail, please do not hesitate to contact me.

Sincerely,

Joseph Pigg
Senior Counsel