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Part III

## Farm Credit Administration

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12 CFR Parts 611, 612, 619 et al.

Compensation, Retirement Programs, and Related Benefits; Final Rule

**FARM CREDIT ADMINISTRATION****12 CFR Parts 611, 612, 619, 620 and 630**

RIN 3052-AC41

**Compensation, Retirement Programs, and Related Benefits****AGENCY:** Farm Credit Administration.**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA, us, we, or our) amends our regulations for Farm Credit System (System) banks and associations to require disclosure of pension benefit and supplemental retirement plans and a discussion of the link between senior officer compensation and performance. Also, we are amending our regulations to require timely reporting of significant or material events that occur at System institutions between annual reporting periods. We believe these requirements will promote transparency of and consistency in disclosures and ensure timely reporting to shareholders. In addition, the final rule establishes minimum responsibilities that a compensation committee must perform. Further, the final rule requires that System banks and associations provide for a non-binding, advisory vote on senior officer compensation by shareholders. Also, the final rule bifurcates existing annual reporting requirements at § 620.5 and makes other technical changes.

**DATES: Effective Date**—This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

**Compliance Date**—All provisions of this rule require compliance on the effective date, except advisory votes on compensation increases under § 611.410(b). Advisory votes on compensation increases of 15 percent or more are not required until 2014.

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**I. Objective**

The objectives of the final rule are to:

- Improve the transparency and completeness of senior officer compensation and retirement benefits disclosures;
- Promote the continued safety and soundness of System institutions by establishing minimum responsibilities to be performed by an institution's compensation committee;
- Ensure timely communication with System shareholders on significant or material events that occur at institutions between annual reporting periods;
- Provide shareholders with a clear and complete understanding of their institution's obligations and commitments related to supplemental retirement benefit plans (SRP) for all employees; and
- Encourage member participation in the control and management of their institution by establishing criteria under which an institution must provide its voting shareholders the opportunity to cast a non-binding, advisory vote on senior officer compensation.

**II. Background**

The Farm Credit Act of 1971, as amended (Act),<sup>1</sup> authorizes the FCA to issue regulations implementing the Act's provisions.<sup>2</sup> Our regulations are intended to ensure the safe and sound operations of System institutions and to govern the disclosure of financial information to shareholders of, and investors in, the System. Congress explained in section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act)<sup>3</sup> that disclosures of financial information and compensation paid to senior officers, among other disclosures, provide System shareholders with information necessary to better manage their institution and make informed decisions regarding the operation of their institution.

In addition, the FCA Board declared its commitment to support the cooperative business model and structure of System banks and associations in its October 14, 2010, resolution.<sup>4</sup> We emphasize the cooperative principles of a farmer-owned, Government-sponsored enterprise by advancing regulatory proposals that encourage farmer- and rancher-borrowers to participate in the management, control, and ownership of their institutions.

On November 18, 2010, we issued an advance notice of proposed rulemaking (ANPRM) to gather information for the development of a proposed rulemaking on disclosures of senior officer compensation and other related topics.<sup>5</sup> In consideration of the responses received, the FCA issued a proposed rule on January 23, 2012, to amend our regulations governing:

- Enhanced disclosures of senior officer compensation and retirement benefits and supplemental retirement plans for all employees;
- Timely notices to shareholders of significant or material events occurring at their institution;
- Minimum responsibilities to be performed by compensation committees; and
- A non-binding, advisory vote by shareholders on senior officer compensation.<sup>6</sup>

<sup>1</sup> Public Law 92-181, 85 Stat. 583 (1971), 12 U.S.C. 2001, *et seq.*

<sup>2</sup> 12 U.S.C. 2252(a)(8), (9) and (10).

<sup>3</sup> Public Law 102-552, 106 Stat. 4131 (1992).

<sup>4</sup> Copies of the resolution may be obtained by contacting the FCA.

<sup>5</sup> See 75 FR 70619 (Nov. 18, 2010).

<sup>6</sup> See 77 FR 3172 (Jan. 23, 2012).

### III. Comments and Our Responses

The comment period for the proposed rule closed on April 16, 2012.<sup>7</sup> We received 458 comment letters to the proposed rule from individuals and entities associated with the System, including each of the four Farm Credit banks, System associations, and the Farm Credit Council (Council), responding on behalf of its members. The majority of the comment letters supported the Council's comments. We discuss the comments to our proposed rule and our responses below. Unless otherwise discussed in this preamble, areas of the proposed rule that did not receive comment are finalized as proposed.

#### A. General Issues

In this section of the preamble, we address comments questioning our authority to issue this rule, those making reference to policy statements, laws and our examination authority, and those suggesting non-regulatory methods to address the subjects within this rulemaking.

##### 1. FCA Policy Statement and Executive Orders

A few commenters stated that the proposed rule was inconsistent with FCA Board Policy Statement FCA-PS-59.<sup>8</sup> FCA-PS-59 sets out our regulatory philosophy on developing and issuing regulations necessary to carry out the Act and the strategies to accomplish that philosophy. Commenters asserted they found no reasoned determination of the beneficial value of the proposed rule relative to the cost. Other commenters stated that our rule may not comply with the instructions of Executive Orders 13563 and 13579 that agencies consider quantitative and qualitative costs and benefits of a rulemaking.<sup>9</sup> Also, commenters remarked that we did not specifically identify risks or problems that needed to be addressed in a rulemaking and that current compensation practices within the System are not excessive and do not pose undue risk. Other commenters stated we had not completed a cost-benefit analysis before proposing the rule. A few commenters expressed concern at the implementation efforts that would be required if the rule became final. Many commenters

remarked that we should not impose regulatory requirements that restrict individual institution discretion in compensation practices. Several commenters expressed concern that the rule does not give sufficient consideration to the varied asset size and operations of System institutions. A few commenters stated the rule was a regulatory burden.

We believe that this rulemaking is consistent with FCA-PS-59 and the objectives of Executive Orders 13563 and 13579.<sup>10</sup> FCA-PS-59 incorporates the provisions of the Executive Orders. It states that the FCA will develop regulations based on a reasoned determination that the benefits justify the cost of regulating an issue and that preambles to regulations will explain the rationale for the regulatory approach adopted. The FCA is the independent Federal agency in the executive branch of the Government responsible for examining and regulating System institutions. When issuing regulations, we consider if the rulemaking duplicates other requirements, would be ineffective, or impose burdens greater than the benefits received. We promulgate rules necessary to implement the expectations and requirements of the Act, which in the case of compensation practices within the System, is to support shareholder participation in the management, control, and ownership of the System and, more broadly, to protect and promote the safety and soundness of System institutions through oversight of management. We believe this rule clarifies the intended meaning of certain existing rules, eliminates confusion through reorganization of the rules, enhances the consistency, transparency, and timeliness of disclosures to shareholders and investors, helps ensure safe and sound compensation practices, and enhances communication with and encourages participation by shareholders in the management and control of their institution. Therefore, in light of these benefits, we do not believe this rule is inconsistent with FCA-PS-59 or Executive Orders 13563 and 13579 and does not result in a significant adjustment of or burden to individual institution operations.

The provisions of FCA-PS-59 and the Executive Orders do not limit us to issuing regulations only when there is an existing adverse risk or problem. Our responsibilities as a safety and soundness regulator require us to be

proactive and prudent in our rulemaking, as well as reactive by providing standards that help avert potential problems. This rulemaking is intended to ensure that appropriate compensation practices and consistent and transparent disclosure standards exist for all System institutions. We considered the size, complexity, risks, interrelationships, and resources of System institutions when developing this rule. While we believe it is important to preserve individual institution flexibility when possible, our regulatory responsibility requires us to issue regulations that we determine appropriate for safety and soundness. In keeping with today's changing economic and business environments, and in accordance with the findings of Congress under section 514 of the 1992 Act and FCA Board Policy Statement FCA-PS-80, "Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions,"<sup>11</sup> we believed it was appropriate to review and update our rules on senior officer compensation disclosures and other related topics.

##### 2. The Farm Credit Act

Commenters claimed we did not consider the approach taken by other financial regulators. They questioned if this rulemaking is consistent with the requirements of other regulators, given the provisions of section 5.17(a)(8) of the Act.<sup>12</sup> Section 5.17(a)(8) of the Act authorizes us to regulate the preparation and dissemination by System institutions of information on financial condition and operations to shareholders and investors. This section of the Act instructs the FCA to establish regulations on the dissemination of financial statements that are not more burdensome or costly than those of national banks. Commenters asserted that we need a compelling business justification to exceed the disclosure requirements of other regulated entities.

We believe this rulemaking is consistent with the requirements of other regulators. Commenters referencing section 5.17(a)(8) of the Act stated that the FCA is to follow the disclosure requirements of financial entities that are not publicly traded. However, section 5.17(a)(8) of the Act makes no distinction between the financial regulation of publicly traded and non-publicly traded national banks. The Act incorporates all financial regulations of commercial banks, regardless of whether or not the banks are publicly traded. Therefore, the FCA

<sup>7</sup> The FCA extended the original 60-day comment period at the request of interested parties. See 77 FR 16485 (Mar. 21, 2012).

<sup>8</sup> Regulatory Philosophy, 76 FR 54638 (Sept. 1, 2011), effective July 8, 2011.

<sup>9</sup> E.O. 13563, "Improving Regulation and Regulatory Review," dated January 18, 2011, and E.O. 13579, "Regulation and Independent Regulatory Agencies," dated July 11, 2011.

<sup>10</sup> Executive Order 13563 does not apply to independent agencies, but Executive Order 13579 requests independent regulatory agencies to follow the principles contained in Executive Order 13563.

<sup>11</sup> See 75 FR 64728, Oct. 20, 2010.

<sup>12</sup> 12 U.S.C. 2252(a)(8).

uses all financial industry regulations as the parameters for financial disclosures, while also considering the cooperative structure of the System, and has done so in this rulemaking. Further, while FCA requirements governing the dissemination to shareholders of quarterly reports may not be more burdensome or costly than the requirements applicable to national banks, as an independent regulator of the System we are not required by section 5.17(a)(8) of the Act to mirror the actions of other regulators. Instead, we consider those policy positions and decide if we should follow them or take a different approach. Also, the commenters did not incorporate the admonition of the 1992 Act regarding compensation disclosures of System directors, officers, and employees. The 1992 Act requires that FCA regulations ensure compensation disclosures provide information necessary to assist shareholders in making informed decisions regarding the operation of their institutions.

A few commenters asserted that we had violated the provisions in the Act, which provide for bank and association boards of directors to establish compensation for senior officers and staff. We are not regulating the amount or manner in which bank and association senior officers and employees are compensated. Instead, many of the provisions in the rule relate to the disclosure of that compensation. Provisions in the rule also address safety and soundness concerns that an institution must consider when establishing compensation plans. Our general authority at section 5.17(a)(9) and (10) of the Act empower us to issue regulations for the safety and soundness of the System and to carry out the provisions of the Act. Finally, we are promoting cooperative principles by providing additional avenues for shareholders to have a greater voice in how senior officer compensation is distributed. None of these actions violates provisions in the Act, especially those relating to determining compensation.

Some commenters stated that our rulemaking efforts conflict with section 5.17(b) of the Act. This section of the Act precludes the FCA from approving institution bylaws. The prohibition on bylaw approval doesn't preclude rulemaking on matters affecting an institution's bylaws or the safe and sound operations of System institutions. In fact, section 5.17(a)(9) of the Act directs us to issue rules and regulations "necessary or appropriate" to carry out the Act. As we have explained in other rulemakings, issuing rules affecting

bylaws does not mean we are approving bylaws in violation of section 5.17(b) of the Act. In pursuit of ensuring a safe and sound System and carrying out the Act, institution bylaws are necessarily impacted by our rules. Consequently, we may regulate the terms and conditions by which institutions exercise their powers through their bylaws, while not approving the bylaws themselves, and then examine compliance with our regulations.

### 3. Examination and Enforcement

Many commenters cited our examination and enforcement authorities as a sufficient means to address disclosure issues, concluding that additional regulations are unnecessary. Commenters stated that because there is no significant safety and soundness concern currently in the System, the suggested approach would be to minimize the burden of regulatory requirements and target individual institutions with possible problems, rather than address the issue at the System level.

We examine to ensure the safety and soundness of System institutions and their compliance with laws and regulations. This function is not a substitute for our responsibility to issue regulations implementing the Act and ensuring the safety and soundness of System institutions. Our regulations provide minimum standards of performance by System institutions. Our examiners use our rules as the basis for compliance determinations and to require any necessary corrective actions. Regulations reduce the likelihood that examinations will uncover unsafe and unsound practices and provide a minimum standard of performance to assure stakeholders of the safe and sound operations of System institutions.

Also, commenters stated that we have enforcement powers necessary to correct any unsafe or unsound compensation practices without adopting this rule. Commenters asserted that the rule undermines a risk-based examination approach. However, the commenters did not elaborate on how that examination approach is compromised by this rulemaking. While we agree with the commenters that we have enforcement authority, we do not view it as our only tool for ensuring the safety and soundness of System institutions. Safe and sound operations of individual System institutions are supported by a clear set of rules, compliance with those rules and thorough examinations.

### 4. Informal Guidance

Commenters supported our objective of improving System disclosures,

agreeing that existing regulations needed updating. However, they questioned the need for additional regulations on shareholder involvement and the activities of the compensation committees. Commenters also remarked that adoption of the rule could carry unintended consequences and undermine the stated objectives of the rule. The commenters explained that a compensation committee could manipulate compensation in order to avoid the proposed non-binding, advisory vote on chief executive officer (CEO) or other senior officer compensation. We address comments on the non-binding, advisory vote in that section of this preamble.

Commenters asked that we withdraw the rule and work with the System to find a non-regulatory approach to strengthen institution disclosures and compensation practices. Many of these commenters remarked that the rule is contrary to the guidance contained in "The Director's Role" handbook issued by FCA,<sup>13</sup> pointing out that the handbook emphasizes the board's governance responsibilities for member-owners and that the responsibility is undermined by excessive regulation.

The guidance in "The Director's Role" is not contradicted by this rulemaking. "The Director's Role" emphasizes the boards of directors' responsibilities to member-owners and the use of good governance practices in fulfilling those responsibilities. This rulemaking recognizes those responsibilities and promotes good governance through transparent, timely and consistent disclosures, enhancing the fiduciary role of the compensation committee, and providing for communication with and engagement by member-owners. The "Director's Role" emphasizes, as does this rulemaking, the cooperative structure of the System and the related accountability of directors to shareholders. This rulemaking supports accountability through enhanced disclosures and advisory votes, while setting a minimum set of responsibilities for the compensation committee. A voluntary or non-regulatory approach to strengthening disclosures and compensation is valuable, but it does not replace the consistency and stability that rules provide in assuring System stakeholders of complete, consistent and transparent disclosures and good governance practices over compensation. An effective compensation and disclosure process is critical to good governance,

<sup>13</sup> "The Director's Role: A Guide to Leading Your Institution Effectively," (FCA publication, [www.fca.gov](http://www.fca.gov)).

which in turn is essential for institution safety and soundness.

One commenter added that cooperatives are historically given great deference by State regulators in setting policy. The comment did not account for the fact that the System is a Government-sponsored Enterprise (GSE) with a public policy mission.<sup>14</sup> In the 1992 Act, Congress reiterated the need for adherence to this mission, particularly in the area of compensation disclosures, through FCA regulation.

We have analyzed the comments received and have amended certain provisions in this final rulemaking. We discuss comments specific to certain provisions in the following section of the preamble.

### B. Specific Issues

#### 1. Bifurcation of Annual Reporting Requirements Sections [existing § 620.5(h) through (k); new § 620.6]

We proposed moving the disclosure requirements for directors and senior officers to new § 620.6. Also, we proposed that § 620.5(h) contain a reference to § 620.6, stating that the presentation of the § 620.6 disclosures would continue to be required in the annual report. No changes to the current requirements of existing § 620.5(h), (j), and (k) were made, except to remove redundancy and enhance clarity in the regulatory language in existing § 620.5(i). We also clarified where to disclose the required statement that the information on compensation for any individual senior officer, as disclosed in the Summary Compensation Table (Compensation Table), is available to shareholders upon request. As conforming technical changes, we proposed changing references to the disclosures in the annual report related to director and senior officer compensation and conflicts of interest, and addressed in other sections of our rules, to their location in new § 620.6. We received no comments on these organizational changes and finalize them as proposed. However, we received comments on existing provisions in this section, and discuss those comments below.

Existing regulations require that the aggregate senior officer group reported in the Compensation Table include all senior officers plus employees whose compensation is among the five highest paid during the fiscal year, regardless of whether or not those employees are senior officers (the aggregate group). One commenter requested clarification on what compensation measures should

be used to determine which employees are among the five highest paid. The commenter stated that if compensation included all elements identified in the Compensation Table, the aggregate group would be more than just senior officers. We clarify that compensation measures used to determine which employees are among the five highest paid includes all amounts included in the “total” column of the Compensation Table. We remind the commenter that this is not a new provision.<sup>15</sup>

Also, existing regulations provide that shareholders may request information on the compensation of any individual included in the aggregate group.<sup>16</sup> Commenters objected to our clarifying that the request for information on compensation could be made on any employee reported in the aggregate group. Commenters asserted that the clarification “expanded” shareholder access to compensation information on highly compensated employees reported in the aggregate group. They requested that we limit shareholder access solely to the information on the compensation of senior officers. Commenters asserted that employees included in the aggregate group who are not covered by the § 619.9310 definition of “senior officer” should not have their individual compensation accessible by shareholders. Commenters stated that release of this information would result in personnel issues, including “poaching” of employees. However, several commenters acknowledged that most institutions have never received a request by a shareholder for information on any individual’s compensation reported in the aggregate group.

We continue to believe that it is important for shareholders to have access, without restriction, to individual compensation information of the aggregate group. We proposed no changes to the requirement and are not persuaded to change it now, especially as commenters to this rulemaking stated their institutions have never had a shareholder make a request under the

<sup>15</sup> This provision was added in a 1986 rulemaking. We explained that the rule “\* \* \* required that the aggregate compensation of senior officers (and at a minimum the top five most highly paid officers, whether or not designated as senior officers) be disclosed without naming the individuals included.” See 51 FR 21336 (June 12, 1986).

<sup>16</sup> The 1986 final rulemaking preamble stated disclosure of the salaries of individual senior officers or anyone else included in the aggregate is available to shareholders upon request. The 1986 rulemaking only limited the “upon request” availability to those whose total compensation exceeded \$50,000. See 51 FR 21336 (June 12, 1986). This threshold limit was removed in the 2006 governance rulemaking. See 71 FR 5740 (February 2, 2006).

provision. Institutions may neither question the reason for a shareholder request, nor record the request in the shareholder’s files. Institutions must promptly provide the information to their shareholders.

A few commenters requested we change compensation disclosures from a “paid” to an “earned” basis to more closely resemble generally accepted accounting principles (GAAP). We did not propose changes to this area, but may consider the matter in a future rulemaking. Deferred compensation reported under § 620.6(c) continues to be reported on an earned basis.

A few commenters asked that we remove deferred compensation from the Compensation Table because it is already included in reported salary or bonus amounts. The commenters suggested reporting deferred compensation only when the employee bears a risk in the investment or the institution provides enhanced benefits. These comments relate to an existing provision that requires reporting of deferred compensation in the Compensation Table, which has been a requirement since 1994.<sup>17</sup> As is currently required, amounts reported in the deferred compensation/perquisites column of the Compensation Table include the dollar value of other annual compensation not properly categorized as salary or bonus. Therefore, the existing rule addresses commenters’ issues and, if followed, prevents duplicative reporting.

A few commenters objected to the Compensation Table including disclosure of severance pay to senior officers and requested we allow institutions discretion on disclosing this information. Commenters noted that disclosure of this information may result in litigation for the institution and may limit the use of severance plans. This required disclosure is not a new disclosure and changes to it were not part of the proposed rule. In addition, we do not believe that this provision should be changed since severance plans continue to be used by institutions, notwithstanding their disclosure in the annual report. The final rule retains the existing requirement to include severance in the “Other” column of the Compensation Table.

We proposed a definition of supplemental retirement plans in § 619.9335 of our general definition section. We received no comments on the proposed definition, but in reviewing comments on disclosure of these retirement plans we identified a

<sup>14</sup> Section 1.1 of the Act (12 U.S.C. 2001).

<sup>17</sup> 59 FR 37406 (July 22, 1994).

technical issue with the proposed definition. The proposed rule clearly explains the definition applies to all supplemental retirement plans funded by System institutions, not just those of the Farm Credit banks or associations. We are therefore making a technical correction in the final rule to replace the term "Farm Credit bank or association" with "Farm Credit institution" in the § 619.9335 definition of supplemental retirement plans.

## 2. Enhanced Disclosures of Senior Officer Compensation [new § 620.6(c)]

We proposed requiring disclosure of:

- Institution obligations related to SRPs and supplemental executive retirement plans (SERPs);
- The overall risk and reward structure of compensation, pension benefit and retirement plans;
- The link between institution performance and senior officer compensation as reported in the Compensation Table; and
- The dollar amount of tax reimbursements or tax payments provided by the institution to senior officers.

The final rule incorporates many suggestions offered by commenters to clarify provisions of the rule and enhance the value of the disclosures.

Commenters stated their support for updating existing FCA regulations on compensation disclosures to ensure consistency, transparency, and clarity. One commenter asked that the required disclosures conform to its existing practices. Some commenters also stated existing disclosures already are more detailed than necessary, reducing the value of the annual report. A few others remarked that compensation is a sensitive subject that should not be overly publicized. Others remarked that disclosure requirements should be limited to those that are material and meaningful, stating the current rulemaking creates excessive disclosures that lack materiality.

The FCA weighs the cost and burden of making disclosures against the value the disclosures provide shareholders and investors. Our rules must factor in the varied and increasingly complex compensation and retirement programs at all institutions. We believe the additional disclosures are necessary to ensure that shareholders are informed of all the key elements of senior officer compensation and retirement, and facilitate consistent disclosures among System institutions. Also, we remind commenters expressing concern over publicizing System compensation practices that, in addition to the requirement in the 1992 Act for

disclosure of compensation paid to senior officers, the System is a GSE with responsibility for public accountability.

One commenter stated that reporting senior officers in the aggregate for both the Compensation and Pension Benefits Tables could produce misleading results. The commenter explained that because the compensation of a single member of the aggregate group might change, the aggregate reporting might give results not representative of the entire group. The commenter did not suggest an alternative reporting method. In this rulemaking, we did not propose disclosing compensation on an individual basis and the final rule does not require it. However, any institution may voluntarily provide clarity and transparency to the quantitative data by including a qualitative discussion on the compensation of each member of the aggregate group.

One commenter asked that we change the definition of "senior officer" in § 619.9130 to only include the CEO<sup>18</sup> and the most senior level of officers reporting to the CEO. We proposed no changes to this definition and the final rule does not make one. We continue to believe the existing definition of senior officer, developed in consideration of the Securities and Exchange Commission (SEC) definition for "executive officer," accurately captures senior staff at institutions.<sup>19</sup> It includes those senior officer positions found in most lending institutions and includes other employees involved in setting institution policy. Therefore, the final rule retains the existing definition of senior officer.

Commenters suggested having disclosure provisions vary by the size of the institution. Other commenters endorsed consistency in disclosures at all sizes of institutions. We continue to believe the required disclosures are relevant information for shareholders regardless of the size of the institution. This belief is expressed in FCA-PS-80, where we explain that System institutions are member-focused cooperatives deriving benefit from members participating in the management, control, and ownership of their institutions. Irrespective of size, shareholders need relevant information in order to engage in any meaningful way in the management and control of their institutions. We continue to believe that compensation information on the CEO and other senior officers is

relevant information. Subject to applicable law and regulations, the quality and quantity of that information should be based on the compensation policies and practices of the institution and not driven by size.

### a. Pension Benefits Table [§ 620.6(c)(4)]

We proposed a new § 620.6(c)(4) that would have required institutions to disclose certain information on pension benefit plans in tabular format, including disclosure of SERPs in a Pension Benefit Table. The information proposed to be disclosed included:

- Funded and unfunded present value of accumulated benefits for CEO and other senior officer pension and retirement benefit plans;
- Years of credited service; and
- Vested and unvested dollar amounts.

Also, the proposed rule would have required the reporting of off-balance sheet commitments related to senior officer compensation and pension benefits, such as benefits earned but not yet vested.

Commenters stated support for improved annual report disclosures on SRPs, but made several suggested changes to enhance the disclosures. Commenters noted that allocations to the benefit programs are done on a macro basis and suggested aggregate plan reporting, which would be in accordance with GAAP. Commenters explained that institutions are unable to break out the data into vested and unvested amounts. They stated that individual reporting would be overly burdensome and goes beyond reporting required by GAAP and SEC requirements. Also, commenters noted that plan assets used to fund the benefits are fungible and not specifically assigned to individual participants. We did not intend that § 620.6(c)(4) require disclosure by individual employee. The final rule clarifies that the requirement to separately report pension benefits was intended to separate CEO benefits from other senior officers in the aggregate, similar to the reporting requirements in the Compensation Table. Also, commenters suggested that we align the disclosures in the Pension Benefits Table to similar System disclosures and that institutions report payments made during the fiscal year and the present value of accumulated benefits, in lieu of funded and unfunded and vested and unvested amounts.

We agree that many of these suggested changes provide more meaningful disclosures to shareholders and investors on pension benefits and are consistent with disclosure in the combined System-wide report to

<sup>18</sup> Use of the title "Chief Executive Officer" includes all persons occupying that position or similar positions, regardless of the actual title used. See 12 CFR 619.9130.

<sup>19</sup> See governance rulemaking adding definition, 71 FR 5740 (Feb. 2, 2006).

investors. Therefore, the final rule at § 620.6(c)(4) replaces the proposed disclosures in the Pension Benefits Table with the:

- Plan name;
- Years of credited service for the CEO and the average years of credited service for the other senior officers;
- Present value of accumulated benefits; and
- Payments made during the reporting period.

Also, the final rule removes the “Total” column from the Pension Benefits Table and makes corresponding changes to § 620.6(c)(4)(i), (ii), (iii), and (iv), which describe the required Pension Benefits Table disclosures. Also, we are moving the requirement that institutions disclose off-balance sheet commitments of compensation earned but not yet vested from this section to § 620.5(e)(4)(v).

Also, commenters responded that assumptions used to determine the present value of pension benefits could vary significantly among institutions and between reporting periods. Commenters suggested disclosing changes in pension value and the reason(s) for the change. Disclosure of the assumptions used to determine the present value was not a specific requirement of the proposed rule and is not part of the final rule. However, we refer commenters suggesting disclosure of the assumptions used to determine the present value of pension benefits or the reason for a change in the pension value to existing § 620.5(g). Section 620.5(g) requires disclosure of information necessary to an understanding of the institution’s financial condition, changes in financial condition, results of operations, known trends, uncertainties, commitments, etc.

Commenters asked how information in the Pension Benefits Table is included in the Compensation Table. We considered the recommendations, the formats currently used by System institutions, and that used in the combined System-wide report to investors. For consistency with industry practice and the reporting practices of the System, the final rule requires that the change in pension value be included in the Compensation Table. The final rule removes the proposed language in § 620.6(c)(3)(iii) discussing the inclusion of the Pension Benefit Table in the “Other” column of the Compensation Table to eliminate potential confusion in compensation reported. This change does not remove the existing requirement to include retirement paid or contributions made by the institution to a defined

contribution plan in the Compensation Table.

A few commenters requested that the header on the Pension Benefits Table not refer to “annual” but did not explain the reason for the request. To enhance clarity, the final rule requires that the information reported in the Pension Benefits Table be as of the most recent fiscal year end.

A few commenters asked us to clarify the provision in § 620.6(c)(3) exempting disclosure of contributions by an institution to a defined contribution plan if the plan is made available to all employees on the same basis. These commenters asked when the “available to all employees” is determined and explained that some plans were previously available to all employees, but are now available only to senior officers. We decline to make this clarification. If the plans are not open to all employees during the reporting period they must be reported in the Compensation Table.

#### b. Discussion Related to Compensation Programs of Senior Officers [§ 620.6(c)(5)]

We proposed requiring a discussion of the overall risk and reward structure of compensation, pension benefit and retirement plans, and the link between institution performance and CEO and other senior officer compensation as reported in the Compensation Table. We received comments supporting the requirement to discuss the relationship of compensation and benefit plans to an institution’s business goals and the link between pay and performance. Commenters explained that existing disclosures on compensation plans do not characterize their risk to the overall operations of the institution. They specifically supported adding incentive pay disclosure to the annual report and stated that the additional disclosures would benefit the System, shareholders, and bond investors. However, a few commenters remarked that the requirement was unreasonable because it was too much information for the institution to summarize and too much information for the shareholder to digest. Several commenters expressed concern that the proposed disclosures would not materially improve the disclosures and that existing disclosures were fair to employees and transparent to shareholders.

The intent of the requirement is to provide shareholders with the information necessary to better manage their institution. We believe the data currently required to be disclosed and presented in the Compensation Table must have meaning beyond merely

reporting numbers. Also, we believe the qualitative disclosures will provide shareholders with information that links pay with performance and will better enable them to make informed decisions regarding the operation of their institution. In making these disclosures, we expect institutions to discuss the criteria used to determine overall performance (e.g., capital and risk management, credit risk and risk exposure to earnings, liquidity management, and compliance with financing agreements). In addition, we expect a discussion of the benchmarks or other factors used to determine compensation, including incentive-based compensation. We reiterate that the discussions can be succinct, but should also be specific to the institution rather than general or boilerplate discussions.

Also, in § 620.6(c)(6) we proposed that the institution disclose in the vicinity of the Compensation Table the authority of shareholders to petition for an advisory vote on CEO and senior officer compensation. In the final rule, we are making grammatical changes to the language. We are not changing the intent of the rule.

#### c. Tax Reimbursements [§ 620.6(c)(3)]

We proposed that tax reimbursements provided by the institution to senior officers be reported in the “Deferred/Perquisite” column in the Compensation Table as other personal benefits. Overall, commenters did not object to reporting tax reimbursements as part of senior officer compensation. However, commenters responded that such reimbursements are not naturally thought of as perquisites and should instead be included in the “Other” column in the Compensation Table. We do not object to reporting these reimbursements in the “Other” column of the Table. There is no de minimis exception for items required to be reported in the “Other” column and any item reported in the “Other” column must be described in a footnote to the Compensation Table. Our intent is to provide a more transparent disclosure of all tax reimbursements to CEOs and other senior officers, regardless of the dollar amount. Since the requested change fulfills this intent, the final rule requires tax reimbursements be reported in the “Other” column of the Compensation Table.

Commenters requested that we revise the “Other” column of the Compensation Table to exempt de minimis items from reporting requirements, similar to that for perquisites. We decline to adopt this suggestion because we did not propose

a de minimis level for other compensation. We believe other compensation is generally of a nature requiring full disclosure.

Also, commenters requested clarification on whether amounts reported in the perquisites and other compensation columns are reported by subcategory or by lump sum. The amounts reported in the "Other" column may be reported lump sum, but must also be described in a footnote. Compensation Table columns represent the entire amount for the reporting period. For example, if \$11,600 were reported in the "Other" column, existing regulations require that a footnote describe the dollar amount of each item comprising the \$11,600, such as \$4,600 for tax reimbursements and \$7,000 for severance pay. In addition, the \$5,000 de minimis reporting exemption allowed for perquisites applies to the total of all perquisites for the reporting period, rather than each reportable perquisite. For example, if \$3,100 was provided in the form of personal use of a company car and premiums of \$2,200 were paid for life insurance by the institution, the \$5,000 perquisite de minimis is exceeded and the lump sum of \$5,300 would be reported in the Compensation Table.

#### d. Disclosure of Plans [§ 620.6(c)(5)]

Existing disclosure regulations require that an institution describe "all" plans offered to senior officers and highly compensated employees reported in the aggregate pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year or is proposed to be paid or distributed in the future for performance during the last fiscal year. We proposed clarifying that the required discussion of plans include compensation, incentive, performance, and retirement and pension plans.

Commenters requested that we withdraw the requirement to report on "all" compensation plans because this requirement would result in voluminous and excessive disclosures in reports. They stated that the additional disclosures would give the appearance that compensation risks are greater than other risks. Also, they stated that disclosure of all plans goes beyond GAAP and SEC requirements. The proposed rule did not add the word "all" to the rule.

The requirement to report on all plans is an existing requirement. We are clarifying that compensation plans include all remuneration plans, such as salary, bonus, deferred compensation, incentive, performance, and retirement and benefit plans. We believe that the

narrative disclosures can be provided in a succinct manner to include only those factors necessary to an overall understanding of each plan. We would expect the disclosures to include, at a minimum, the purpose or objective of each plan, the material terms of the plans, conditions of payments, and other information the institution considers necessary to further an overall understanding of the entire remuneration program as disclosed in the Compensation and Pension Benefits Table. As reporting "all" plans is existing language, we do not believe the clarification causes more excessive or burdensome disclosures. We believe describing all plans will result in enhanced shareholder understanding of the nature and scope of these plans and provide qualitative information to the quantified numbers reported in the Compensation and Pension Benefits Tables. Therefore, we finalize this provision of the rule as proposed.

Commenters asked if the requirement to discuss all compensation plans is by individual employee or for the aggregate senior officer group. One commenter expressed concern that the requirement might include reporting performance-based compensation on an individual basis, which could reveal confidential personnel information. The final rule explains that the disclosures are to be made individually for the CEO and in the aggregate for other senior officers and those highly compensated employees included in the aggregate group.

#### 3. Compensation Committee Responsibilities [§§ 620.31 and 630.6(b)]

In 2006, the FCA issued the governance rule requiring institutions to establish compensation committees.<sup>20</sup> In the 2009 FCA Bookletter BL-060, "Compensation Committees," we provide guidance on how a compensation committee should fulfill its obligations to the institution and shareholders. BL-060 was issued at a time of heightened concern and scrutiny on senior officer compensation. Continued scrutiny of, and concern regarding, compensation and retirement practices requires us to continue our prudent and proactive approach regarding regulation of compensation committee oversight responsibilities, including key factors identified in BL-060. We proposed requiring the compensation committee analyze or review its institution's:

- Long-term compensation and retirement benefit obligations and

determine they are appropriate to the services performed and not excessive;

- Incentive-based compensation programs and payments and determine they are structured to consider future losses and risks to the institution;
- Senior officer compensation and incentive-based programs and determine they support the long-term strategy and promote safe and sound business practices; and
- Compensation programs for other select groups of employees.

Most commenters responded that the proposed requirements were too prescriptive and too rigid and did not follow a principles-based approach. Commenters stated that the guidance provided in BL-060 was adequate and that it provided the flexibility to adopt best practices. Commenters emphasized that BL-060 provided needed flexibility not apparent in the rule for institutions of various sizes and with different compensation programs. Commenters suggested that we follow other financial regulators and require the adoption of policies and use our examination authority to verify compliance with the booklet.

The responsibilities required by this rulemaking are derived from key factors identified in BL-060 and, therefore, we do not believe the requirements in the rule are more rigid than the BL-060 guidance. For example, a key factor discussed in BL-060 is that a compensation committee should be able to fully analyze and justify the long-term liability to the institution in developing compensation packages and evaluate that incentive programs are based on long-term financial performance and are consistent with prudent risk-taking and produce a safe and sound outcome. Also, another key factor discussed is the committee's responsibility to ensure that retirement benefits are appropriate and not excessive. Further, we believe it is prudent to ensure these minimum responsibilities provided as informal guidance in BL-060 are incorporated into our regulations and routinely considered by the compensation committee when performing its duties. However, in consideration of the comments received, the final rule clarifies that compensation committees must document that the minimum responsibilities identified in the rule were considered when performing its duties.

Commenters discussed the perceived potential impact on the use of short- and long-term compensation programs under the rule. One commenter also questioned if the rule intended to require the use of claw-back provisions

<sup>20</sup> See 71 FR 5740 (Feb. 2, 2006).



to address risks. We did not intend the compensation committee responsibilities to limit or otherwise constrain the use of short- and long-term incentive programs, if those programs are determined appropriate by the committee, and have clarified the rule accordingly. In addition, we did not intend that the rule require or prohibit the use of claw-back provisions by the compensation committee. The rule, instead, seeks to ensure the committee considers the implications of incentive-based compensation programs, including providing safeguards that the programs are not unduly influenced by short-term performance expectations. The rule further clarifies that when conducting a risk assessment of compensation plans, the assessment is for undue risks. We recognize that some risks are inherent in any compensation program and we did not intend to require elimination of all risks.

We continue to promote the cooperative structure of governance and believe the compensation committee itself should determine that incentive-based programs and payments:

- Are reasonable and proportionate to the services performed;
- Support the institution's business strategy for achieving stated goals and are in accord with the institution's human capital and marketing plans;
- Ensure that the institution's compensation practices support the System's basic mission to serve all types of creditworthy agricultural producers; and
- Are structured so payout schedules consider the potential for future losses or undue risks to the institution.

We also clarify in the rule that existing regulations require that all compensation committees are to maintain records of meeting minutes. Documentation ensures that the committee's actions are memorialized, provides insight for future deliberations, and facilitates examination activities. In addition, the responsibilities of compensation committees at associations, banks, and the Funding Corporation are similar. Therefore, we are making a clarifying change in the final rule at § 620.31(b) to reflect this.

Commenters agreed that the compensation committee plays a key role in ensuring compensation programs are appropriate and do not jeopardize the institution's operations. However, these commenters stated that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)<sup>21</sup> did not place similar risk

management responsibilities on the compensation committees of smaller publicly traded companies and, therefore, the FCA should not do so. Commenters requested that compensation committees of smaller institutions be exempt from complying with the regulation. We did not propose an exemption to the compensation committee requirements based on the size of the institution and do not agree with the requested exemption. Risk management is essential to the overall safety and soundness of each System institution and we continue to believe that the proposed compensation committee requirements are appropriate for all institutions regardless of asset size. The final rule does not provide for an exemption for smaller institutions.

Commenters claimed the rule would create undue costs and burdens for compensation committees. We believe this rule captures existing guidance and therefore will not cause undue additional costs and burdens. Commenters questioned whether the compensation committee should conduct a pre- or post-review of compensation plans. We would expect that the dynamic and sometimes complex nature of compensation plans require ongoing review by the committee. The rule is silent on when the committee should review compensation plans and allows it to carry out its responsibilities as it considers appropriate and necessary to fulfilling its stewardship role and fiduciary duties.

#### 4. Notice to Shareholders [§§ 620.10, 620.11, 620.15, and 620.17]

We proposed requiring a separate notice to shareholders of significant or material events occurring in intervening reporting periods. The notice would serve to enhance timely and transparent communication to institution member/owners throughout the institution's fiscal year. We proposed allowing institutions to distribute the notice:

- In direct communications with shareholders;
- Via electronic distribution (e.g., a Web site);
- By publication with circulation wide enough to be reasonably assured that all shareholders have timely access to the information; or
- In the quarterly report to shareholders.

Also, the notice would be dated, signed and provided to the FCA at the same time it was distributed to shareholders.

Commenters supported such timely notice to shareholders and investors on significant and material events

occurring in the System. Other commenters stated that significant and material disclosures are already reported in the quarterly and annual reports and, therefore, additional notice is unnecessary. Also, commenters noted that the Federal Farm Credit Banks Funding Corporation (Funding Corporation) issues press releases on behalf of the System and, as such, supported withdrawing the requirement for additional notices. One commenter stated that the rule could force release of information prematurely and to the detriment of the institution.

We recognize that existing quarterly and annual reports address material and significant disclosures of financial events. We are also aware that the Funding Corporation, in response to expectations of investors in the bond market, issues press releases for System-wide events. However, we proposed the notice for more than System-wide or financial events. We emphasized this by including a list of events that may require notice. Many of those events are disclosed only once a year in the annual report, if then. Because the notice is issued after a material or significant event has occurred, we do not believe issuing a notice is either premature or detrimental to the institution. We continue to believe that timely communication is important and, given the various means by which the institution may communicate the event, we do not believe an interim notice requirement is an unnecessary burden on institutions or that the communication will cause it to incur significant costs.

We proposed a list of certain events and circumstances we believed might be material or significant and that, if so, should be communicated to shareholders in a timely manner. Commenters expressed reservations about the materiality or significance of items in the list and remarked that the list was inflexible. Commenters responded that institutions should have the ability and latitude to interpret if an event was significant or material for reporting in a notice and requested that accounting principles and legal standards be used to determine if a notice is required. Also, several commenters suggested we replace the list with a provision requiring notice when determined necessary by the FCA. Some commenters offered specific remarks about the list of events themselves, stating that issuing a notice for personnel events of the type in the list would overstate their impact.

In response to comments, we are not including the list of events in the final rule. Instead, the final rule at § 620.15(a)

<sup>21</sup> Public Law 111-203, 124 Stat. 1376, (H.R. 4173), July 21, 2010.

requires that the institution's board of directors develop, adopt, and maintain a policy for providing timely notices to shareholders. In doing so, we believe we address comments made regarding personnel events listed in the proposed rule. At a minimum, the policy must:

- Identify the types of significant or material events affecting the institution's operations, management, etc. to be communicated to shareholders;<sup>22</sup> and
- Discuss how the institution will determine materiality and significance.

We expect the policy to provide sufficient guidance to ensure consistent reporting in notices of similar events. Also, the final rule adopts at § 620.15(e) the suggestion by some commenters that the FCA retain the authority to require a notice when it determines there has been a significant or material event.

Institutions should consider the following when identifying material and significant events:

- Changes to compensation, incentive, performance, or retirement and benefit plans;
- Changes to institution capitalization bylaws;
- Results of shareholder votes;
- Early director departures and departures of senior officers;<sup>23</sup>
- Letters of intent to merge;
- A change in the external auditor engaged to audit the institution's financial statements;
- A change in an external party engaged to perform internal audit functions, if the change was due to a disagreement with the party over the results or findings from the work performed; and
- Reportable FCA supervisory and enforcement actions.

The final rule requires that, at a minimum, this part of the policy include the events that would be covered under the existing definitions for "material" and "significant" contained in § 620.1. One commenter stated the definitions of "material" and "significant" in § 620.1(h) and (q) are vague and subjective. We do not agree that the § 620.1 definitions are vague or

overly subjective. The definitions have been used by institutions for years in preparing financial reports and are intended to provide some flexibility and discretion in identifying material and significant events. This flexibility is necessary to accommodate variations in institution operations.

Commenters expressed dislike for the requirement to place the notice on the first page of the quarterly report, if the quarterly report is used to communicate the event. They noted that the disclosure should be placed in the report where required by GAAP. The rule does not necessarily require that the notice be reported on the first page of the quarterly report. However, the rule requires that the notice be included at the beginning (i.e., in the opening section) of the quarterly report, that it be conspicuous, and that it not be included in a footnote. We continue to believe such events should be prominently disclosed and not marginalized. We clarify that if GAAP prescribes where a particular disclosure should be reported, then prominent disclosure would be made as required by this regulation, but with reference to the detailed GAAP disclosure. The final rule retains the requirement that, if the quarterly report is used to issue the notice, the notice must be prominently disclosed at the beginning of the report.

The rule requires that the notice be issued as soon as possible, but not later than 90 days after the event occurs. Commenters requested clarification when using the quarterly report for notice if the event occurred soon after a quarterly report is issued, requesting that the 90-day time limit be eliminated in those cases. One commenter requested that the notice be issued solely in the institution's quarterly report (or annual report for fourth quarterly period reporting). Others asked to use an institution's Web site for these notices.

As previously discussed, the proposed rule provided that the notice could be issued by posting to the institution's Web site,<sup>24</sup> by reporting in the quarterly report, or by any means with wide enough circulation to reasonably assure that all institution shareholders have access to the information. Given the variety of means available to issue the notice, we are not persuaded that any delay in issuing the notice, including for convenience, is warranted. We continue to believe that communication of significant or

material events is important to shareholders and should be communicated in a timely manner, especially given the various means by which the institution may communicate the event. We do not believe that a 90-day requirement is an unnecessary burden on institutions or that communication will cause it to incur significant costs.<sup>25</sup>

Also, we do not believe that limiting distribution of the notice to the quarterly report is sufficient. Quarterly reports traditionally only update financial information in the annual report. As explained, the purpose of the notice is timely communication of material and significant events occurring between annual reporting periods and which may not be financial events. We believe that using other means to issue the notice, such as a Web site posting, facilitates access to the notice by shareholders and investors. Therefore, if the event occurs a few days after the quarterly report is issued, institutions may have to use an alternative distribution method for the notice.

The proposed rule included a statement in § 620.11(d) that notices made part of a quarterly report must comply with both quarterly reporting requirements and the notice requirements of § 620.15. Comments were made regarding the potential complications of satisfying GAAP reporting requirements and the notice requirements. We included this statement in § 620.11(d) to clarify that the notice, no matter how it is communicated to the shareholders, must satisfy the provisions of § 620.15. Since the requirement raised questions on compliance with GAAP for the quarterly report, the final rule removes the statement from § 620.11(d) and places it in § 620.15(b)(2). We believe this change clarifies that the notice does not affect GAAP and other quarterly reporting requirements contained in § 620.11. We made technical changes to § 620.15 in the final rule to accommodate these changes.

We received few comments on the proposed consolidation into § 620.17 of the existing requirements for special notices on permanent capital. Those few comments received questioned the need for the consolidation, which we feel was adequately explained in the proposed rule preamble. The consolidation was a technical change and not substantive, designed to enhance the clarity and use

<sup>22</sup> In identifying matters of importance to shareholder decisions, we refer institutions to the objective of section 1.1(b) of the Act, which encourages member-borrower participation in the management, control, and ownership of their institution.

<sup>23</sup> As considered appropriate and relevant by the board, disclosure may or may not include the reason for the departure of a director prior to the end of his or her term of office or for the departure of a senior officer. For example, the planned departure of a senior officer may not rise to the level of materiality or significance to require notice if the departure was part of an institution's established succession plan.

<sup>24</sup> This includes an association using a funding bank's Web site, if it routinely uses its funding bank's Web site to communicate with its shareholders.

<sup>25</sup> Unless our rules specify "business days", any use of the term "days" means calendar days. The final rule states the notice is due within 90 days, so that would be 90 calendar days, not business days as some commenters stated.

of the rule. Therefore, we finalize the consolidation of our rules on special notices for permanent capital into § 620.17 as proposed.

5. Non-binding, Advisory Vote by Shareholders on Senior Officer Compensation [§§ 611.100, 620.5(a)(11) and 630.20(i); new §§ 611.360, 611.410 and 620.6(c)(6)]

We proposed requiring Farm Credit banks and associations provide shareholders the opportunity to cast a non-binding, advisory vote on senior officer compensation. The vote would be required if either the CEO's or the aggregate of all other senior officers' compensation, as disclosed in the Compensation Table, increased or decreased by 15 percent or more from the previous reporting period. We also proposed authority for association shareholders to petition for the vote at any time.

All commenters strongly objected to the non-binding advisory vote and asked that it be withdrawn. Most commenters claimed we were applying the Dodd-Frank Act to the System, a law they state "Congress specifically chose not to apply to the System." Commenters added that System institutions do not compensate staff with stock or stock options. They stated that compensation in the form of stock options led to the financial crisis of 2008 for commercial lenders and was a key motivator for Congress when adding section 951 of the Dodd-Frank Act. Section 951 of the Dodd-Frank Act requires, in part, that publicly traded companies hold separate non-binding shareholder advisory votes on the compensation of executives at least every 3 years. Section 951 also provides that shareholders must vote at least every 6 years on whether to hold the advisory votes on compensation every 1, 2 or 3 years.

Most commenters expressed a view that advisory votes do not further cooperative principles or promote the safety and soundness of the System and would have a negative impact on the cooperative business model. Several comments focused on the member-controlled board of directors, citing that members can elect or remove directors. Commenters also questioned whether holding an advisory vote was a "best practice" for cooperative institutions. Commenters stated that the vote was a referendum on an institution's board decisions and would result in undermining the discretion and decision-making authority of the board and the compensation committee. Some added that advisory votes would replace existing effective "engagement

mechanisms" and dilute shareholders' messages to directors. Still others stated that it is an unfair expectation of the membership, going so far as to state that members did not want a vote on their institution's compensation practices. One commenter added that an advisory vote would not reflect risk assessment or market practices. Commenters asserted that each shareholder would have a personal view on what is reasonable compensation, making it difficult for the institution to use the "feedback" from the vote or translate it into a practical recommendation to improve compensation practices. Commenters added that even with enhanced compensation disclosures, shareholders would not have the same level of detailed information or access to confidential information used by the board in reaching compensation decisions. They asserted that the votes would have to be unanimous to avoid shareholder dissatisfaction or lawsuits. Commenters stated that advisory votes could dilute voter participation in other matters, including director elections, and that shareholders might view the cost of conducting advisory votes as a misuse of funds. One commenter estimated the cost of a single advisory vote at \$30,000. Commenters also pointed out the potential for little or no shareholder response on advisory votes, making the effort a waste of resources.

We are not withdrawing the requirement for a non-binding advisory vote on compensation, but are including this provision in the final rule with certain changes. Further, in the proposed rule preamble, we did not reference the Dodd-Frank Act because its provisions on compensation practices and disclosures do not apply to the System. While the Dodd-Frank Act introduced the advisory, non-binding vote to the corporate community at large, it does not have exclusive jurisdiction over the use of such a vote. In addition, the Dodd-Frank Act did not prohibit the use of advisory voting by the System, nor does it prevent us from regulating the use of non-binding, advisory votes. As stated in FCA-PS-59, our rulemaking efforts seek to further the public policy mission of the System, which includes promoting shareholder involvement in the management, control, and use of the System. As with other laws not directly involving the System, we consider the goals and objectives of those laws for applicability to the System. The Dodd-Frank Act strives, in part, to address compensation excesses by increasing director accountability and shareholder involvement. It is true that the System

did not play a role in the activities that led to the 2008 financial crisis, which in turn led to passage of the Dodd-Frank Act. However, as a GSE operating as cooperatives, System institutions should continually strive to operate under high standards. Each institution must be accountable to its shareholders and should embrace alternative venues for shareholder involvement in the management and control of the institution.

We explained in the proposed rule preamble that the non-binding advisory vote was another tool for institutions to use in the continuous effort to operate under high standards and to further the System's public policy mission, as well as encourage member-owner participation. As such, we believe drawing the shareholders' attention to a matter through advisory voting is relevant to the core principle of System institutions being member-owned. We do not envision the vote requiring shareholders to have access to extensive or confidential compensation information. We believe institutions can provide shareholders with the necessary information in order that shareholders may judge whether compensation or compensation changes are justified and acceptable. The board may then use that feedback in making compensation decisions. Therefore, the feedback should enhance, rather than undermine, board decision making. We also believe that the cost of conducting the vote will not be burdensome since the vote is required only if a material increase in compensation occurs or if the voting shareholders petition for the vote.

Several commenters also raised the issue of fiduciary duty, explaining an advisory vote is not a good exercise of prudent business judgment. Commenters stated advisory votes also undermine the responsibility and accountability of the compensation committee. We do not agree with these comments and continue to believe that advisory votes are consistent with a board's fiduciary duties of care, loyalty, and obedience, which require directors to investigate, review, monitor, and take corrective action when necessary. Boards are often presented with conflicting information and have to weigh the information and its source before making decisions. The result of prior advisory votes is information that should be considered by the board when reviewing or developing compensation plans. As a result, fiduciary duties require consideration of, not strict adherence to, the advisory vote results. As such, we see no fiduciary interference in holding advisory votes. Instead, we believe the votes advance

the special fiduciary duty of cooperative boards to be accountable to shareholders as well as local, State, and Federal government authorities.

Commenters remarked that section 951 of the Dodd-Frank Act does not reference increasing shareholder participation, the reason given in the FCA proposed rule for an advisory vote. Commenters challenged our statutory basis for the advisory vote, arguing that section 1.1(b) of the Act does not authorize the FCA to regulate communications between shareholders and their institutions. Other commenters added that the FCA has not shown there are existing deficiencies in shareholder communication or participation to support the requirement.

As we stated earlier, we are not limited to issuing regulations only when there is a deficiency in institution operations. Section 1.1(b) of the Act states that the objective of the Act is to “continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture.”<sup>26</sup> Further, Congress reiterated in the 1992 Act the need for shareholder awareness and involvement in the compensation practices of their institutions. Specifically, the 1992 Act states one purpose of enhanced compensation disclosures is to assist shareholders in managing their cooperatives. We do not believe an advisory vote regulates communications, but rather provides another tool for shareholders to participate in the management of their institutions. We recognize that the election of the board of directors by members has been the primary means for member participation in the management of their institution. However, we do not believe that it need be the only tool for shareholder participation.

Other commenters suggested we require a compensation expert on the board of directors or require disclosure of the reason for compensation changes instead of a vote. For the reasons stated above, we continue to believe an advisory vote on compensation is valuable, notwithstanding these suggestions. We encourage institutions to consider these suggestions for their operations, but are not requiring such at this time.

A few commenters asked why the vote would be non-binding and limited to senior officer compensation if the objective is to increase member participation. We believe that a non-

binding vote, as opposed to a binding vote, will provide meaningful feedback to the board of directors while also allowing the board to use that feedback in the manner it considers most appropriate. The nature of a binding vote would require a definite action by the board. Also, we require the vote solely on the CEO and other senior officer compensation because it is those employees who make the decisions, or provide information for the board to make decisions, on institution policy, strategic direction and operations. However, institutions are not prohibited from seeking shareholder input on compensation in ways other than holding a non-binding vote nor does it limit the shareholder votes solely to CEO and other senior officer compensation. We encourage institutions to expand shareholder votes as they consider appropriate.

Other commenters pointed out that several financial regulators chose not to extend a Dodd-Frank Act type of mandatory advisory vote to their regulated entities not already subject to it. We also chose not to impose the Dodd-Frank Act style advisory vote on System institutions. Instead, we determined that material increases in compensation or the desire of the voting shareholders should determine if a vote is required.

One commenter suggested that if the vote is required it should be based on cash compensation instead of all compensation. The commenter explained that it would be unfair to have a vote on compensation changes that are beyond the control of the institution or employee, such as changes in investment values of retirement plans. We do not agree that an advisory vote on compensation should be limited to cash outlays. Shareholders should be able to express support or disagreement with all components of compensation. However, we agree that changes in pension value may be unrelated to compensation earned or paid and should not be included in the calculation of the increase. The final rule at § 611.410(b)(1) explains that the calculation of compensation increases does not include changes in pension value. We also clarify that the compensation subject to the vote is that reported under the provisions of § 620.6(c)(3).

#### a. Advisory Votes Based on Increase in Compensation

A few commenters stated that 15 percent is an arbitrary threshold. We do not agree. We selected 15 percent as a threshold based on our review of reported compensation changes within

the System that looked at recent percentage changes to bank and association CEOs’ and other senior officers’ compensation. We chose a threshold that was equal to or exceeded the olympic average<sup>27</sup> of percent changes for the 3 years observed to reflect what may be, in a given year, a significant increase. The olympic average indicated that 15 percent was a material increase, an unusual and infrequent occurrence and, therefore, an advisory vote triggered by the 15-percent increase should not be a recurring burden on System institutions.

Still others suggested an advisory vote triggered by a percentage change in reported compensation could result in a vote on the institution’s performance when most of the compensation change is due to incentive pay programs. We agree with the comments that an advisory vote on compensation changes may be viewed as providing shareholder feedback on the overall performance of the institution. As we have explained, the compensation committee should be reviewing incentive and performance-based compensation programs to ensure they support the overall positive performance of the institution and discuss the relationship between compensation and performance in accordance with new § 620.6(c)(5).

Commenters expressed concern with the burden and complexity involved in holding advisory votes based on compensation changes of 15 percent or more for the aggregate group. Some explained the inclusion of highly compensated employees in the aggregate group could lead to a 15-percent overall increase, and therefore a vote, when there was no corresponding change in senior officer pay. We agree that including highly compensated employees in the 15-percent calculation for the aggregate group may unnecessarily trigger a vote on all senior officer compensation included in the aggregate amount. We did not intend to trigger a vote strictly due to changes in pay from commission activities for highly compensated employees. We recognize incentive pay for increased lending and related services activities may place employees who are not involved in the institution’s decision-making processes in the aggregate group. The final rule at § 611.410(b)(2) provides that the compensation of highly compensated employees, who are not senior officers, may be removed from the aggregate senior officer compensation before calculating compensation increases to determine if

<sup>27</sup> An Olympic average is the average removing the high and low values.

<sup>26</sup> 12 U.S.C. 2001.

an advisory vote is required. The rule also clarifies that a separate vote is held if the reported compensation for the CEO, individually, or other senior officers, in the aggregate, as defined in § 619.9310, meets or exceeds 15 percent from the previous fiscal year. That is, compensation increases for the CEO is subject to its own advisory vote, notwithstanding what occurs to the compensation of the aggregate group.

When proposing the advisory vote on compensation, we used the CEO and aggregate group because that data is disclosed in the Compensation Table. The final rule does not require the vote on senior officers in the aggregate to include highly compensated employees whose compensation is reported in the aggregate group but who are not considered senior officers. Therefore, if these employees' compensation is reported in the aggregate group, institutions should discuss in the voting material that the vote is solely on the compensation increase of senior officers (excluding the CEO) and not the compensation of the entire aggregate group as may be disclosed in the Compensation Table.

Institutions should also ensure the voting information provided to shareholders is meaningful and relevant and facilitates the shareholder's decision. In this rulemaking, we did not propose that senior officer compensation, excluding CEO compensation, be disclosed in the Compensation Table by individual. However, institutions may make such individual disclosures without being in conflict with our regulations. We may reconsider the appropriateness of aggregate reporting in a future rulemaking, but currently have retained our aggregate reporting requirements. We emphasize the importance of providing complete and clear information to shareholders on senior officer compensation. Transparent disclosure allows them to make informed decisions on compensation.

One commenter noted that requiring an advisory vote due to a 15-percent threshold change may have the unintended consequence of causing compensation committees to discontinue or significantly limit the use of performance-based incentives as part of executive compensation plans in order to avoid a vote. Other commenters stated that the 15-percent threshold may actually lead to inflation of executive compensation over time, as well as compensation plans which are less impacted by overall association performance. They noted that the board could elect to shift a greater share of total compensation from "at-risk"

variable performance to base pay in order to avoid triggering a vote.

Common law fiduciary duties prohibit directors from seeking to avoid compliance with our rules. The compensation committee has final authority over the compensation plans and practices of its institutions. Also, its responsibilities include those discussed in our rules, including the enhancements made in this rulemaking. Our rules require that:

- Compensation committees determine and document the performance of its duties related to incentive-based compensation programs;
- Programs are reasonable and proportionate to the services performed;
- Payout schedules consider the potential for future losses or undue risks to the institution; and
- Programs support the institution's long-term business strategy, as well as promote safe and sound business practices.

Also, our rules require compensation committees to act responsibly and in the best interest of the institution when making compensation decisions. We remind compensation committees of their duty to the safety and soundness of the institution. Further, manipulation of performance-based incentives solely for the purpose of avoiding a vote would be difficult to justify upon examination by the FCA.

A few commenters stated that CEO compensation increases may easily exceed the 15-percent threshold, especially when there is a change in the CEO during the reporting year. Section 611.410(b)(3) provides that institutions will not be required to hold an advisory vote when compensation increases 15 percent or more and results from either a change in personnel or an increase in the number of senior officer positions included in the aggregate group. Other commenters questioned the value of holding the vote when compensation decreased. We agree with the comments that a vote on decreases in compensation is unnecessary and we are not finalizing that requirement.

#### b. Advisory Votes Based on Petitions

We proposed that associations hold advisory votes if 5 percent of the institution's voting shareholders petition for the vote. One commenter objected to the petition component of the rule explaining that, without a link between the authority to petition and impropriety in compensation practices, a petition could be initiated at-will and by a low percentage of shareholders, creating a nuisance to the institution. Commenters suggested that institution

bylaws, which provide for shareholder petitions for special meetings, are sufficient to address any compensation concerns. We do not agree that a shareholder advisory vote resulting from a petition is either improper or a nuisance. Institutions have a duty to provide shareholders opportunities to voice concerns and petitioning for advisory votes is such an opportunity.

Commenters noted that institutions currently employ "engagement mechanisms" by which shareholders may express their opinions to the board. Those mechanisms are generally structured or planned by the institution's management. In contrast, petition authority gives shareholders the ability to initiate the process and express their opinion on compensation through an advisory vote. Also, in response to other matters, commenters noted that most institution bylaws provide petition authority to shareholders to call a special meeting. While we believe institutions recognize the value of shareholder-controlled engagement at their cooperatives, commenters did not discuss the percentage of shareholder signatures required to petition under these authorities. Percentage requirements may vary among institutions and, in some cases, may even exceed average voter turnout. Therefore, we believe a regulatory provision on shareholder petition authority for an advisory vote on compensation is a more effective mechanism for allowing shareholders to express their opinion, if they so desire.

The final rule at § 611.410(c) retains the requirement that associations hold an advisory vote if petitioned by 5 percent of their voting shareholders. Since the final rule does not require highly compensated employees who are not senior officers to be included in the calculation of the 15-percent increase or to be subject to the vote, the final rule makes a corresponding change to the petition provision for advisory votes.

#### c. Advisory Voting Procedures

Commenters requested guidance on when advisory votes are held, explaining there appears to be several opportunities for a vote. They remarked that it is unclear if compensation committees are to delay work until the receipt of advisory vote results. One commenter specifically suggested that votes be tied to annual reports to limit the vote to once a year. Another commenter asked if a record date of shareholders eligible to vote would be required for advisory votes as it is for director elections. One commenter asked how to conduct the votes, stating

their institution only holds in-person voting.

In § 611.360 of the final rule, we clarify that institutions are expected to have policies and procedures to implement advisory voting. When we proposed the rule, we envisioned the advisory vote being held in conjunction with the annual meeting or director elections, absent a shareholder petition for the vote. This process would reduce costs and allow the use of the same stockholder record list for all voting activities. We also envisioned that shareholders would vote “yes” or “no” on CEO and other senior officer compensation changes. Shareholders would base their vote on compensation disclosures provided by the institution or through discussions with the board. However, we did not propose regulations limiting the vote in this manner, nor does the final rule contain any.

The final rule provides institutions with the flexibility to determine when and how advisory votes occur. The final rule requires institutions to address such matters by adopting and maintaining written policies and procedures. However, the final rule includes a requirement in § 611.360(a)(1)(i) that an advisory vote on compensation triggered because of a 15-percent increase in compensation from the previous fiscal period must occur within 12 months after the fiscal period in which the increase occurred. This timeframe allows the institution to provide for the vote at annual meetings or in conjunction with director elections, thereby reducing the cost to the institution. Also, it ensures that results of the vote are available for disclosure in the next annual report.

The final rule at § 611.360(a)(1)(ii) makes clear that the institution’s policies and procedures must identify if votes will be conducted in-person, by proxy, or by mail. Institutions may choose any combination of these balloting methods under the final rule. While not addressed in the regulatory text, we expect compensation committees or the board to document how it used the vote results and its reasoning. We also expect institutions to follow normal voting procedures by setting a record date list of voting shareholders.

Commenters stated that the subject matters of the advisory vote are not specified in the rule, expressing concern at opening advisory votes to more than compensation matters. One commenter had no objection to advisory votes covering more than compensation, and that advisory votes should be determined by policies at each

institution, including the subject, timing, and manner of the advisory vote. Another commenter objected to requiring policies on advisory votes of any kind. Since the rule only requires an advisory vote on senior officer compensation, the final rule removes the proposed requirement to identify subject matters of advisory votes. Likewise, the final rule revises the definition of advisory votes at § 611.100(a) to remove the reference to compensation practices.

One commenter objected to providing advisory votes at banks on a one-member, one-vote basis instead of allowing weighted and cumulative voting. The commenter asserted that giving equal voice to a Farm Credit bank’s shareholders is contrary to cooperative principles. Conversely, a few commenters expressed concern that one bank shareholder could control the vote’s “message” sent to the funding bank if weighted voting was used. We do not believe that requiring non-binding, advisory votes be cast on a one-member, one-vote basis is contrary to cooperative principles. We proposed that all advisory votes be cast on a one-member, one-vote basis, with no weighted or cumulative voting allowed. This provision ensures that all bank shareholders, regardless of asset size or the size of membership, have an equal voice on the compensation matter. We finalize in § 611.360(c) the requirement that advisory votes be cast on a one-member, one-vote basis.

A few commenters asserted that an advisory vote would be harmful to the lender-borrower structure of the System. They stated that giving members direct influence over the compensation of the managers administering member loans was inappropriate. Some commenters stated that institution management could take retribution against shareholders if the vote resulted in a decrease in pay. The rule at § 611.360(b) requires all advisory votes to be treated under the confidentiality and security in voting rules at § 611.340. The confidentiality of the vote resolves many of the concerns raised, including those questioning the likelihood of retaliation, undue influence, or improper lender-borrower actions. Applying the confidentiality voting provisions of § 611.340 to advisory votes ensures that only the results of the vote will be reviewed by the board and management, not the identity of the voter. Further, existing conflicts of interest rules prohibit directors, officers, and employees from inappropriately seeking to influence votes or retaliate against the voter.

Comments regarding the funding bank relationship raised the concern of retaliation, asserting that bank senior officers would not treat member-associations fairly if those same associations voted on their compensation. We believe that associations face this same accountability to member shareholders and this accountability is a core cooperative principle. We continue to believe confidential advisory votes, cast using a one-member one-vote scheme, provide accountability to the member-owners, while protecting members from retaliatory actions.

#### d. Reporting and Disclosure of Advisory Votes

Commenters requested clarification regarding the timing of disclosures on the results of advisory votes. Another commenter asked if the disclosure requirement included the cost of conducting the advisory vote. The rule provides flexibility to the institution in that it does not require and does not prohibit disclosure of the cost of the vote. The final rule at § 611.360(d) clarifies that reporting advisory votes is required only if an advisory vote was held during the fiscal period covered by the annual report. Also, reporting of advisory votes may be required in accordance with policies adopted by the board to comply with the new § 620.15 disclosure requirements for notices to shareholders. Institution boards should consider if the results of the vote would be a material or significant event that would require reporting to shareholders in a § 620.15 notice.

To facilitate clarity, the final rule removes redundancies in the disclosure and reporting requirements for advisory votes. The final rule consolidates the disclosure of advisory votes in the annual report into § 620.5(a)(11). The rule also clarifies that disclosures are required only if advisory votes are held during the reporting period. Those disclosures must include the types and results of the votes, and if the vote occurred due to a petition request. The rule retains the requirement to disclose to shareholders their authority to petition for an advisory vote in § 620.6(c)(6), but requires a cross-reference to the disclosures made under § 620.5(a)(11), if any. The rule finalizes as proposed the advisory vote disclosure requirements in § 630.20 for the System-wide report to investors.

#### 6. Disclosure of Supplemental Retirement Plans to Employees [§ 620.5(e)]

In new § 620.5(e)(4), we proposed requiring disclosures of an institution’s

obligations and other information for SRPs provided to all employees, excluding the CEO and other senior officers whose benefits would be reported in the Pension Benefits Table. The proposed disclosures were to include a description of the plans, the funded and unfunded obligations of the plans, and the vested and unvested dollar amounts of the plans.

Commenters expressed support for the requirement to report funded and unfunded amounts of SRP liabilities, but requested that we not require the disclosure of vested and unvested amounts for SERPs and SRPs citing GAAP considerations. Other commenters explained that GAAP only requires reporting of the present value of earned benefits, as of the reporting date. These commenters explained that the proposed requirement might result in reporting potential benefits, a speculative process that could only harm shareholders' understanding and trust of the disclosure. Some commenters stated support for reporting vested and unvested amounts in § 620.5(e)(4) as long as it was done in total and aggregated for all plans.

In finalizing the rule, we revised this section to be consistent with the changes we are making to the reporting of SERPs. The final rule on SRP disclosures allows aggregate reporting for all SRPs, including SERPs provided to senior officers and disclosed in the Pension Benefits Table. With this change, shareholders will be able to compare the total amount(s) reported in § 620.5(e)(4) with the data reported in the Pension Benefit Table, enabling shareholders to identify the proportionate liability of SRPs and SERPs for the CEO and aggregate group. The SRP disclosures must include the name(s) of the plan(s), present value of accumulated benefits, funded and unfunded obligations, and payments made during the year.

A few commenters asked how to determine the "funded" amount for § 620.5(e)(4), asking if the amount was based on the entire plan, the Rabbi Trust supporting the SERP or something else. In discussing such plans, the institution should include a discussion of funding from whatever source and any other disclosures that the institution believes would be appropriate in order to provide clarity and facilitate an understanding of the information presented.

We are finalizing the requirement to disclose off-balance sheet commitments, such as benefits earned but not yet vested. The requirement is located in this section instead of the proposed requirement to disclose it with the

Pension Benefits Table in conformance with comments received.

7. Miscellaneous [§§ 611.330(c), 611.400, 620.2(c) & (d), 620.4(c), 620.10(c) and 620.11]

In the process of consolidating provisions, some regulatory language was proposed to be changed to remove redundancy and enhance clarity. We received no comments on these miscellaneous technical changes and, except for § 620.2(c), final those provisions as proposed. In § 620.2(c) we proposed clarifying the language regarding the electronic delivery of reports to shareholders. We received no comments on the proposed clarification, but we are making grammatical corrections to the language in the final rule. The final language continues to state that electronic distribution of reports may only occur with shareholder consent and that the provision applies only to those reports individually sent to shareholders, not all reports.

#### C. Compliance Date

All provisions of this rule require compliance on the effective date except the provision of § 611.410(b) requiring advisory votes for increases in senior officer compensation of 15 percent or more. Advisory votes on increases of 15 percent or more in CEO or the aggregate of other senior officers' compensation are not required until 2014. We believe delaying compliance minimizes the potential for variations in implementation of the vote by establishing the compensation reported in the 2012 annual report as the "base line" from which initial compensation increases are measured. Therefore, an advisory vote would be required in 2014 if the CEO's or other senior officers' compensation increased by 15 percent or more in fiscal 2013 compared to fiscal 2012. Results of the advisory vote on increases in compensation would then be disclosed in the 2014 annual report and possibly in an interim notice under § 620.15.

We are not delaying compliance in holding advisory votes resulting from shareholder petitions. Petitions for advisory votes are not tied to a specific report or disclosure, so establishment of a baseline is unnecessary. Further, shareholders can currently petition their institution for special elections or special meetings. Policies and procedures are in place at institutions to facilitate these petitions. This familiarity with petition procedures also negates a need for delayed compliance.

#### IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

#### List of Subjects

##### 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

##### 12 CFR Part 612

Agriculture, Banks, banking, Conflict of interests, Crime, Investigations, Rural areas.

##### 12 CFR Part 619

Agriculture, Banks, banking, Rural areas.

##### 12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

##### 12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 612, 619, 620, and 630 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

#### PART 611—ORGANIZATION

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

**Authority:** Secs. 1.2, 1.3, 1.4, 1.5, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

■ 2. Section 611.100 is amended by:  
 ■ a. Redesignating paragraphs (a) through (f) as paragraphs (c) through (h), respectively; and  
 ■ b. Adding new paragraphs (a) and (b) to read as follows:



**§ 611.100 Definitions.**

\* \* \* \* \*

(a) *Advisory vote* means a non-binding vote by the voting stockholders on certain events of the institution.

(b) *Business day* means a day the institution is open for business, excluding the legal public holidays identified in 5 U.S.C. 6103(a).

\* \* \* \* \*

**§ 611.330 [Amended]**

■ 3. Section 611.330 is amended by:

■ a. Removing the reference “§ 620.5(j) and (k)” and adding in its place, the reference, “§ 620.6(e) and (f)” in the first sentence of paragraphs (b)(1) and (b)(2); and

■ b. Adding the words “in accordance with § 620.21(b) of this chapter” to the end of paragraph (c)(1).

■ 4. A new § 611.360 is added to subpart C to read as follows:

**§ 611.360 Advisory votes.**

(a) Each Farm Credit bank and association must establish and maintain written policies and procedures to implement advisory votes. Advisory votes must be held in accordance with the policies and procedures, which, at a minimum, must:

(1) Establish the timing, manner, and notice of the vote.

(i) Votes held due to a 15-percent or more increase in compensation must occur within 12 months after the fiscal year end in which the increase occurred.

(ii) Votes may be conducted in-person, by proxy, by mail, or any combination thereof.

(iii) If the vote will be held in connection with an annual meeting or director elections, notice of the advisory vote must be part of the Annual Meeting Information Statement, pursuant to § 620.21(d) of this chapter.

(2) If an association, explain the process for petitioning for an advisory vote. Associations must allow stockholders to petition for advisory votes on senior officer compensation under § 611.410.

(3) If a Farm Credit bank that allows stockholders to petition for advisory votes, explain the process for petitioning for an advisory vote.

(b) Advisory votes are subject to the requirements of § 611.340 and the provisions of section 4.20 of the Act (12 U.S.C. 2208).

(c) Advisory votes must be cast using a “one-member, one-vote” voting scheme and are not subject to the provisions in § 615.5230 of this chapter regarding weighted, cumulative, and other voting schemes.

(d) Each Farm Credit bank and association must make the disclosures required by § 620.5(a)(11) of this chapter for advisory votes held during the annual reporting period.

**Subpart D—Compensation Practices of Farm Credit Banks and Associations**

■ 5. Revise the heading of subpart D to read as set forth above.

**§ 611.400 [Amended]**

■ 6. Section 611.400 is amended by:

■ a. Removing the words “Farm Credit System banks” and adding in their place “Farm Credit banks” in paragraph (a);

■ b. Removing the words “distribute a booklet to all FCS banks that communicates” and adding in their place the word “communicate” in the last sentence of paragraph (b).

■ c. Removing the words “Farm Credit System bank” and adding in their place “Farm Credit bank” in paragraph (d)(1); and

■ 7. A new § 611.410 is added to subpart D to read as follows:

**§ 611.410 Advisory votes on senior officer compensation.**

(a) Farm Credit banks and associations must hold advisory votes on the compensation for all senior officers meeting the definition of § 619.9310 of this chapter and the requirements of paragraphs (b) and (c) of this section. Stockholders must be allowed to cast an advisory vote on the compensation of the chief executive officer that is separate from the advisory vote on other senior officer compensation. Advisory votes on compensation must be held in accordance with the policies and procedures established under § 611.360.

(b) If compensation, as reported in the most recent annual report, for either the chief executive officer or the aggregate senior officer group increased 15 percent or more from the previous reporting period, the Farm Credit bank or association must hold an advisory vote.

(1) All compensation reported in the Compensation Table of the annual report (or the annual meeting information statement), except changes in pension benefits value reported under § 620.6(c)(3)(iii)(D) of this chapter, must be included in the calculation to determine if an increase of 15 percent or more occurred in reported compensation amounts.

(2) Compensation of employees reported in the Compensation Table of the annual report (or the annual meeting information statement) pursuant to § 620.6(c)(2)(i) of this chapter may be

excluded when determining if an increase of 15 percent or more occurred.

(3) No advisory vote is required if the 15 percent or more increase in compensation is solely because of a change during the reporting period in the senior officers included in the aggregate or the chief executive officer.

(c) Each association must hold an advisory vote on senior officer compensation when 5 percent of the voting stockholders petition for the vote.

(1) Stockholders may petition for an advisory vote on the compensation of the chief executive officer, the aggregate senior officer group, or both.

(2) Employees reported in the Compensation Table of the annual report (or the annual meeting information statement) pursuant to § 620.6(c)(2)(i) of this chapter may be excluded when holding a vote by petition.

(3) The association must disclose the petition authority in the annual report to shareholders pursuant to § 620.6(c)(6) of this chapter.

**PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS**

■ 8. The authority citation for part 612 continues to read as follows:

**Authority:** Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

**§ 612.2145 [Amended]**

■ 9. Section 612.2145 is amended by removing the reference “§ 620.5(k)” and adding in its place, the reference “§ 620.6 (f)” in paragraph (a)(2).

**§ 612.2155 [Amended]**

■ 10. Section 612.2155 is amended by removing the reference “§ 620.5(k)” and adding in its place, the reference “§ 620.6(f)” in paragraph (a)(2).

**§ 612.2165 [Amended]**

■ 11. Section 612.2165 is amended by removing the reference “§ 620.5” and adding in its place “§§ 620.5 and 620.6” in paragraph (b)(12).

**PART 619—DEFINITIONS**

■ 12. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.4, 1.5, 1.7, 2.1, 2.2, 2.4, 2.11, 2.12, 3.1, 3.2, 3.21, 4.9, 5.9, 5.17, 5.19, 7.0, 7.1, 7.6, 7.8 and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2013, 2015, 2072, 2073, 2075, 2092, 2093, 2122, 2123, 2142, 2160, 2243, 2252, 2254, 2279a, 2279a–1, 2279b, 2279c–1, 2279f); sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

■ 13. A new § 619.9335 is added to read as follows:



**§ 619.9335 Supplemental retirement plan or supplemental executive retirement plan.**

A nonqualified retirement plan that provides benefits in addition to those covered by other retirement plans for all employees and funded in whole or part by a Farm Credit institution.

**PART 620—DISCLOSURE TO SHAREHOLDERS**

■ 14. The authority citation for part 620 is revised to read as follows:

**Authority:** Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

■ 15. Section 620.2 is amended by revising the section heading and paragraphs (c) and (d) to read as follows:

**§ 620.2 Preparing and filing reports.**

\* \* \* \* \*

(c) The reports sent to shareholders must comply with the requirements of § 620.3 and electronic delivery of those reports requires shareholder agreement.

(d) Information in any part of a report may be incorporated by reference in answer or partial answer to any other item of the report, unless instructions for the report state otherwise.

\* \* \* \* \*

■ 16. Section 620.4 is amended by revising paragraph (c) to read as follows:

**§ 620.4 Preparing and providing the annual report.**

\* \* \* \* \*

(c) The report must contain, at a minimum, the information required by §§ 620.5 and 620.6. In addition, the report must contain such other information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

■ 17. Section 620.5 is amended by:

■ a. Adding new paragraphs (a)(11) and (e)(4);

■ b. Revising paragraph (h);

■ c. Removing paragraphs (i), (j), and (k); and

■ d. Redesignating existing paragraphs (l), (m), and (n) as paragraphs (i), (j), and (k), respectively.

The additions and revisions read as follows:

**§ 620.5 Contents of the annual report to shareholders.**

\* \* \* \* \*

(a) \* \* \*

(11) Any advisory votes held during the reporting period, including the types and results of the votes. If an advisory vote resulted from a shareholder

petition, the institution must also discuss the petition.

\* \* \* \* \*

(e) \* \* \*

(4) Describe supplemental retirement plans funded by the institution on behalf of senior officers and employees. The description for each plan must include the:

(i) Plan name;

(ii) Present value of accumulated benefits;

(iii) Payments made during the reporting period;

(iv) Funded and unfunded obligations; and

(v) Off-balance sheet amounts, including benefits earned but not vested.

\* \* \* \* \*

(h) *Directors and senior officers.* In a separate section of the annual report, make the disclosures required in § 620.6 of this part.

\* \* \* \* \*

■ 18. A new § 620.6 is added to subpart B to read as follows:

**§ 620.6 Disclosures in the annual report to shareholders relating to directors and senior officers.**

(a) *General.* (1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each director, and the position, title, and date each senior officer commenced employment in his or her current position.

(2) Briefly describe the business experience during the past 5 years of each director and senior officer, including each person's principal occupation and employment during the past 5 years.

(3) For each director and senior officer, list any other business interest where the director or senior officer serves on the board of directors or as a senior officer. Name the position held and state the principal business in which the business is engaged.

(b) *Compensation of directors.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and noncash compensation). Noncash compensation with an annual aggregate value of less than \$5,000 does not have to be reported. State the total cash and reportable noncash compensation paid to all directors as a group during the last fiscal year. For the purposes of this paragraph, disclosure of compensation paid to and days served by directors applies to any director who served in that capacity at any time during the

reporting period. If applicable, describe any exceptional circumstances justifying the additional director compensation as authorized by § 611.400(c) of this chapter. For each director, state:

(1) The number of days served at board meetings;

(2) The total number of days served in other official activities, including any board committee(s);

(3) Any additional compensation paid for service on a board committee, naming the committee; and

(4) The total cash and noncash compensation paid to each director during the last fiscal year. Reportable compensation includes cash and the value of noncash items provided by a third party to a director for services rendered by the director on behalf of the reporting Farm Credit institution. Noncash compensation with an annual aggregate value of less than \$5,000 does not have to be reported.

(c) *Compensation of senior officers.*

Disclose the information on senior officer compensation and compensation plans as required by this paragraph. The institution must disclose the total amount of compensation paid to senior officers in substantially the same manner as the tabular form specified in the Summary Compensation Table (Compensation Table), located in paragraph (c)(3) of this section.

(1) For each of the last 3 completed fiscal years, report the total amount of compensation paid and the amount of each component of compensation paid to the institution's chief executive officer (CEO), naming the individual. If more than one person served in the capacity of CEO during any given fiscal year, individual compensation disclosures must be provided for each CEO.

(2) For each of the last 3 completed fiscal years, report the aggregate amount of compensation paid, and the components of compensation paid, to all senior officers as a group, stating the number of officers in the group without naming them.

(i) If applicable, when any employee who is not a senior officer has annual compensation at a level that is among the five highest paid by the institution during the reporting period, include the highly compensated employee(s) in the aggregate number and amount of compensation reported in the Compensation Table.

(ii) The report containing the aggregate compensation disclosure must include a statement that disclosure of information on the total compensation paid during the last fiscal year to any senior officer, or to any other employee

included in the aggregate, is available and will be disclosed to shareholders of the institution and shareholders of related associations (if applicable) upon

request. This statement must be located directly beneath the Compensation Table.

(3) The institution must complete the Compensation Table, or something substantially similar, according to the following instructions:

SUMMARY COMPENSATION TABLE

| Annual  |                      |               |              |                            |              |              |
|---|----------------------|---------------|--------------|----------------------------|--------------|--------------|
| Name of individual or number in group<br>(a)  | Year<br>(b)          | Salary<br>(c) | Bonus<br>(d) | Deferred/perquisite<br>(e) | Other<br>(f) | Total<br>(g) |
| CEO .....   | 20XX<br>20XX<br>20XX | \$            | \$           | \$                         | \$           | \$           |
| Aggregate No. of Senior Officers (& other highly compensated employees, if applicable): |                      |               |              |                            |              |              |
| (X) .....   | 20XX                 |               |              |                            |              |              |
| (X) .....   | 20XX                 |               |              |                            |              |              |
| (X) .....   | 20XX                 |               |              |                            |              |              |

(i) Amounts shown as “Salary” (column (c)) and “Bonus” (column (d)) must reflect the dollar value of salary and bonus earned by the senior officer during the fiscal year. Amounts contributed during the fiscal year by the senior officer pursuant to a plan established under section 401(k) of the Internal Revenue Code, or similar plan, must be included in the salary column or bonus column, as appropriate. If the amount of salary or bonus earned during the fiscal year is not calculable by the time the report is prepared, the reporting institution must provide its best estimate of the compensation amount(s) and disclose that fact in a footnote to the table.

(ii) Amounts shown as “deferred/perquisites” (column (e)) must reflect the dollar value of other annual compensation not properly categorized as salary or bonus, including but not limited to:

(A) Deferred compensation earned during the fiscal year, whether or not paid in cash; or

(B) Perquisites and other personal benefits, including the value of noncash items, unless the annual aggregate value of such perquisites is less than \$5,000. Reportable perquisites include cash and the value of noncash items provided by a third party to a senior officer for services rendered by the officer on behalf of the reporting institution.

(iii) Compensation amounts reported under the category “Other” (column (f)) must reflect the dollar value of all other compensation not properly reportable in any other column. Items reported in this column must be specifically identified and described in a footnote to the table. “Other” compensation includes, but is not limited to:

(A) The amount paid to the senior officer pursuant to a plan or arrangement in connection with the resignation, retirement, or termination

of such officer’s employment with the institution.

(B) The amount of contributions by the institution on behalf of the senior officer to a vested or unvested defined contribution plan unless the plan is made available to all employees on the same basis.

(C) The dollar value of any tax reimbursement provided by the institution.

(D) Any changes in the value of pension benefits.

(iv) Amounts displayed under “Total” (column (g)) shall reflect the sum total of amounts reported in columns (c), (d), (e), and (f).

(4) If the institution provides a defined benefit plan or a supplemental executive retirement plan (SERP) to its senior officers, the institution must complete the following Pension Benefits Table, or something substantially similar, for each plan according to the following instructions:

PENSION BENEFITS TABLE

| As of most recent fiscal year-end   |                           |                                       |                                       |
|---|---------------------------|---------------------------------------|---------------------------------------|
| Name of individual  | Years of credited service | Present value of accumulated benefits | Payments made during reporting period |
| CEO .....   | .....                     | \$                                    | \$                                    |
| Senior Officers as a Group (& other highly compensated employees, if applicable). |                           |                                       |                                       |

(i) Report the credited years of service for the CEO and the average credited years of service for the senior officer group under the plan.

(ii) Report the present value of accumulated benefits for the CEO and the senior officer group under the plan.

(iii) Report payments made during the reporting period under the plan for the CEO and the senior officer group.

(5) Provide a description of all compensation, retirement, incentive, and performance plans (plans) pursuant to which cash or noncash compensation was paid or distributed during the last

fiscal year, or is proposed to be paid or distributed in the future for performance during the last fiscal year, to those individuals included in the Compensation Table. Provide the information individually for the chief executive officer and as a group for the senior officers. Information provided for

the senior officer group includes any highly compensated employees whose compensation is reported in the Compensation Table. The description of each plan must include, but not be limited to:

(i) A summary of how each plan operates and who is covered by the plan. The summary must include the criteria used to determine amounts payable, including any performance formula or measure, as well as the time period over which the measurement of compensation will be determined, payment schedules, and any material amendments to the plan during the last fiscal year.

(ii) The overall risk and reward structure of the plan as it relates to senior officers' compensation. The description must include, at a minimum, how each plan is compatible with and promotes the institution's goals and business strategy and the mission as a Government-sponsored enterprise.

(iii) A discussion of the relationship between the CEO and senior officers' compensation to the reporting institution's overall performance. The disclosure must also discuss the relationship between the CEO's and senior officers' compensation to their performance.

(6) Adjacent to the Compensation Table, discuss the authority of shareholders to petition for an advisory vote on CEO and senior officer compensation. Include a reference to the location in the report where the discussion of any advisory votes held during the reporting period is contained.

(7) Associations may disclose the information required by paragraph (c) of this section in the Annual Meeting Information Statement (AMIS) pursuant to subpart E of this part. Associations exercising this option must include a reference in the annual report stating that the senior officer compensation information is included in the AMIS and that the AMIS is available for public inspection at the reporting association offices pursuant to § 620.2(b).

(d) *Travel, subsistence, and other related expenses.* (1) Briefly describe your policy addressing reimbursements for travel, subsistence, and other related expenses as it applies to directors and senior officers. The report shall include a statement that a copy of the policy is available to shareholders of the institution and shareholders of related associations (if applicable) upon request.

(2) For each of the last 3 fiscal years, state the aggregate amount of reimbursement for travel, subsistence,

and other related expenses for all directors as a group.

(e) *Transactions with senior officers and directors.* (1) State the institution's policies, if any, on loans to and transactions with officers and directors of the institution.

(2) *Transactions other than loans.* For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of the immediate family of such person, or any organization with which such person is affiliated.

(i) For transactions relating to the purchase or retirement of preferred stock issued by the institution, state the name of each senior officer or director that held preferred stock issued by the institution during the reporting period, the current amount of preferred stock held by the senior officer or director, the average dividend rate on the preferred stock currently held, and the amount of purchases and retirements by the individual during the reporting period.

(ii) For all other transactions, state the name of the senior officer or director who entered into the transaction or whose immediate family member or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed \$5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) *Loans to senior officers and directors.* (i) To the extent applicable, state that the institution (or in the case of an association that does not carry loans to its senior officers and directors on its books, its related bank) has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

(A) Were made in the ordinary course of business; and

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those

prevailing at the time for comparable transactions with other persons.

(ii) To the extent applicable, state that no loan to a senior officer or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectability; provided that no such statement need be made with respect to any director or senior officer who has resigned before the time for filing the applicable report with the Farm Credit Administration (but in no case later than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(iii) If the conditions stated in paragraphs (e)(3)(i) and (ii) of this section do not apply to the loans of the persons or organizations specified therein, with respect to such loans state:

(A) The name of the officer or director to whom the loan was made or to whose relative or affiliated organization the loan was made.

(B) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year.

(C) The nature of the loan(s);

(D) The amount outstanding as of the latest practicable date.

(E) The reasons the loan does not comply with the criteria contained in paragraphs (e)(3)(i) and (e)(3)(ii) of this section.

(F) If the loan does not comply with paragraph (e)(3)(i)(B) of this section, the rate of interest payable on the loan and the repayment terms.

(G) If the loan does not comply with paragraph (e)(3)(ii) of this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectability.

(f) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of any person who served as director or senior officer on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within 2 years before the time of such filing, or any corporation or business association

of which such person was a senior officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting such person from engaging in any type of business practice.

- 19. Section 620.10 is amended by:
- a. Revising paragraph (a); and
- b. Adding a new paragraph (c) to read as follows:

**§ 620.10 Preparing the quarterly report.**

(a) Each institution of the Farm Credit System must:

(1) Prepare and send to the Farm Credit Administration an electronic copy of its quarterly report within 40 calendar days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution;

(2) Publish a copy of its quarterly report on its Web site when it electronically sends the report to the Farm Credit Administration; and

(3) Ensure the report complies with the applicable provisions of §§ 620.2 and 620.3.

\* \* \* \* \*

(c) Institutions may use the quarterly report to deliver any notice required under § 620.15. Notices required under § 620.17 must be issued separately from the quarterly report, unless otherwise authorized by the Farm Credit Administration.

- 20. Section 620.11 is amended by:
  - a. Revising the introductory text of paragraph (b);
  - b. Revising paragraphs (c) and (d); and
  - c. Removing paragraphs (e) and (f).
- The revisions read as follows:

**§ 620.11 Content of quarterly report to shareholders.**

\* \* \* \* \*

(b) *Rules for condensation.* For purposes of this section, major captions to be provided in the financial statements are the same as those provided in the financial statements contained in the institution's annual report to shareholders, except that the financial statements included in the quarterly report may be condensed into major captions in accordance with the rules prescribed under this paragraph. If any amount that would otherwise be

required to be shown by this subpart with respect to any item is not material, it need not be separately shown. The combination of insignificant items is permitted.

\* \* \* \* \*

(c) *Required content.* A quarterly report must, at a minimum, contain the following items:

(1) *Management's discussion and analysis of financial condition and results of operations.* Discuss material changes, if any, to the information provided to shareholders pursuant to § 620.5(g) that have occurred during the periods specified in paragraphs (c)(2)(i) and (ii) of this section. Such additional information as is needed to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (c)(2)(i) and (ii) of this section shall be provided.

(i) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial conditions from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the institution.

(ii) *Material changes in results of operations.* Discuss any material changes in the institution's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. Such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the institution has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

(2) *Interim financial statements.* The following financial statements must be provided:

(i) An interim balance sheet as of the end of the most recent fiscal quarter and

as of the end of the preceding fiscal year. A balance sheet for the comparable quarter of the preceding fiscal year is optional.

(ii) Interim statements of income for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable periods for the previous fiscal year.

(iii) Interim statements of changes in protected borrower capital and at-risk capital for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(iv) For banks, interim statements of cash flows for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year. For associations, interim statements of cash flows are optional.

(3) *Other related financial items.* State that the financial statements were prepared under the oversight of the audit committee. The interim financial information need not be audited or reviewed by a qualified public accountant or external auditor prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the institution may state that a qualified public accountant or external auditor has performed such a review under the supervision of the institution's audit committee. If such a statement is made, the report of a qualified public accountant or external auditor on such review must accompany the interim financial information.

(d) *Notices.* Institutions using the quarterly report to deliver any notice required under § 620.15 must put the notice information at the beginning of the quarterly report. The notice must be conspicuous and may not be part of any footnotes to the quarterly report.

- 21. Sections 620.15 and 620.17 are revised to read as follows:

**§ 620.15 Notice of significant or material events.**

When a Farm Credit bank or association determines that it has a significant or material event, the institution must prepare and provide to its shareholders and the Farm Credit Administration a notice disclosing the event(s).

(a) Each bank and association board of directors must establish and maintain a policy identifying the categories and types of events that may result in a

notice under this section. At a minimum, events covered under this provision include significant events defined in § 620.1(q) and material events defined in § 620.1(h). The policy must identify how the significance or materiality of an event will be determined.

(b) A notice issued under this section must be made as soon as possible, but not later than 90 days after occurrence of the event.

(1) Each institution must electronically provide the notice to the Farm Credit Administration at the same time as distribution of the notice to shareholders.

(2) Delivery of the notice to shareholders may be accomplished by direct communications with the shareholders, posting the notice on the institution's Web site, as part of the quarterly report to shareholders, or by publishing the notice in any publication with circulation wide enough to reasonably assure that all of the institution's shareholders have access to the information in a timely manner. No matter how the notice is distributed, it must comply with all the provisions of this section.

(c) Every notice must be dated and signed in a manner similar to the requirements of § 620.3(b).

(d) The information required to be included in a notice issued under this section must be conspicuous, easily understandable, complete, accurate, and not misleading.

(e) A Farm Credit System institution may be required to issue a notice under this section at the direction of the Farm Credit Administration.

**§ 620.17 Special notice provisions for events related to minimum permanent capital.**

(a) When a Farm Credit bank or association determines that it is not in compliance with the minimum permanent capital standard prescribed under § 615.5205 of this chapter, that institution must prepare and provide to its shareholders and the Farm Credit Administration a notice stating that the institution has initially determined it is not in compliance with minimum permanent capital standards. Such notice must be given within 30 days following the month end.

(b) When notice is given under paragraph (a) of this section, the institution must also notify its shareholders and the Farm Credit Administration when the institution's permanent capital ratio decreases by one half of 1 percent or more from the level reported in the original notice, or from that reported in a subsequent

notice provided under this paragraph. This notice must be given within 45 days following the end of every quarter at which the institution's permanent capital ratio decreases as specified.

(c) Each institution required to prepare a notice under paragraph (a) or (b) of this section shall provide the notice to shareholders or publish it in any publication with circulation wide enough to be reasonably assured that all of the institution's shareholders have access to the information in a timely manner. The information required to be included in this notice must be conspicuous, easily understandable, and not misleading.

(d) A notice, at a minimum, shall include:

(1) A statement that:

(i) Briefly describes the regulatory minimum permanent capital standard established by the Farm Credit Administration and the notice requirement of paragraph (a) of this section;

(ii) Indicates the institution's current level of permanent capital; and

(iii) Notifies shareholders that the institution's permanent capital is below the Farm Credit Administration regulatory minimum standard.

(2) A statement of the effect that noncompliance has had on the institution and its shareholders, including whether the institution is currently prohibited by statute or regulation from retiring stock or distributing earnings or whether the Farm Credit Administration has issued a capital directive or other enforcement action to the institution.

(3) A complete description of any event(s) that may have significantly contributed to the institution's noncompliance with the minimum permanent capital standard.

(4) A statement that the institution is required by regulation to provide another notice to shareholders within 45 days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one half of 1 percent or more from the level reported in the notice.

■ 22. Section 620.21 is amended by revising paragraph (a)(3)(i) to read as follows:

**§ 620.21 Contents of the information statement.**

(a) \* \* \*

(3) \* \* \*

(i) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.6(e), or any of

the events required to be disclosed in the annual report to shareholders under § 620.6(f) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.6(e) and (f) shall be made with respect to such transactions or events in the information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.6(e) and (f) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the information statement.

\* \* \* \* \*

■ 23. Section 620.31 is revised to read as follows:

**§ 620.31 Compensation committees.**

Each Farm Credit bank and association must establish and maintain a compensation committee by adopting a written charter describing the committee's composition, authorities, and responsibilities in accordance with this section. The compensation committee must report only to the board of directors. All compensation committees are required to maintain records of meetings, including attendance, for at least 3 fiscal years.

(a) *Composition.* Each compensation committee must consist of at least three members and all committee members must be members of the institution's board of directors. Every member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(b) *Responsibilities.* It is the responsibility of each compensation committee to review the compensation policies and plans for senior officers and employees and to approve the overall compensation program for senior officers. In fulfilling its responsibilities, the compensation committee must document that it determined the:

(1) Institution's projected long-term compensation and retirement benefit obligations are appropriate to the services performed and not excessive;

(2) Incentive-based compensation programs and payments are reasonable and proportionate to the services performed and structured so the payout schedule considers the potential for future losses or undue risks to the institution;

(3) Senior officer compensation, incentive, and benefit programs support the institution's long-term business strategy and mission, as well as promote safe and sound business practices; and

(4) Compensation programs designed for specific groups of employees, other

than senior officers, pose no imprudent risks to the institution.

(c) *Resources.* Each institution must provide monetary and nonmonetary resources to enable its compensation committee to perform its duties.

**PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM**

■ 24. The authority citation for part 630 is revised to read as follows:

**Authority:** Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

■ 25. Section 630.6 is amended by revising paragraph (b) to read as follows:

**§ 630.6 Funding Corporation committees.**  
\* \* \* \* \*

(b) *Compensation committee.* The Funding Corporation must establish and maintain a compensation committee by adopting a written charter describing the committee’s composition, authorities, and responsibilities in accordance with this section. The compensation committee must report only to the board of directors. The compensation committee is required to

maintain records of meetings, including attendance, for at least 3 fiscal years.

(1) *Composition.* The committee must consist of at least three members and all members must be members of the Funding Corporation’s board of directors. Every compensation committee member must be free from any relationship that, in the opinion of the board, would interfere with the exercise of independent judgment as a committee member.

(2) *Responsibilities.* It is the responsibility of the compensation committee to review the compensation policies and plans for senior officers and employees and to approve the overall compensation program for senior officers. In fulfilling its responsibilities, the compensation committee must document that it determined the:

(i) Funding Corporation’s projected long-term compensation and retirement benefit obligations are appropriate to the services performed and not excessive;

(ii) Incentive-based compensation programs and payments are reasonable and proportionate to the services performed and structured so the payout schedule considers the potential for future losses or undue risks to the Funding Corporation; and

(iii) Senior officer compensation, incentive, and benefit programs support

the Funding Corporation’s long-term business strategy and mission, as well as promote safe and sound business practices.

(3) *Resources.* The Funding Corporation must provide monetary and nonmonetary resources to enable its compensation committee to perform its duties.

■ 26. Section 630.20 is amended by revising paragraph (i) to read as follows:

**§ 630.20 Contents of the annual report to investors.**

\* \* \* \* \*

(i) *Compensation of directors and senior officers.* State that information on the compensation of directors and senior officers of Farm Credit banks is contained in each bank’s annual report to shareholders and that the annual report of each bank is available to investors upon request pursuant to § 630.3(g). State whether advisory votes were held in any of the disclosure entities during the reporting period and the results of such vote.

\* \* \* \* \*

Dated: September 20, 2012.

**Dale L. Aultman,**  
*Secretary, Farm Credit Administration Board.*  
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