

atives shall have access to and the right to examine all books, documents, papers, records, or other recorded information within the possession or control of the Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations and banks for cooperatives.

(Pub. L. 99-190, § 107, Dec. 19, 1985, 99 Stat. 1316.)

Editorial Notes

CODIFICATION

Section was not enacted as part of the Farm Credit Act of 1971 which comprises this chapter.

PART E—FARM CREDIT SYSTEM INSURANCE CORPORATION

§ 2277a. Definitions

As used in this part:

(1) Board of Directors

The term “Board of Directors” means the Board of Directors of the Corporation.

(2) Corporation

The term “Corporation” means the Farm Credit System Insurance Corporation established in section 2277a-1 of this title.

(3) Insured obligation

The term “insured obligation” means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 2153 of this title—

(A) on or before January 5, 1989, on behalf of any System bank; and

(B) after such date, which, when issued, is issued on behalf of any insured System bank.

(4) Insured System bank

The term “insured System bank” means any System bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 2153 of this title is insured under this part.

(5) State

The term “State” means any of the 50 States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands.

(Pub. L. 92-181, title V, § 5.51, as added Pub. L. 100-233, title III, § 302, Jan. 6, 1988, 101 Stat. 1611; amended Pub. L. 100-399, title III, § 302(a), (b), Aug. 17, 1988, 102 Stat. 994; Pub. L. 104-105, title II, § 214(a), Feb. 10, 1996, 110 Stat. 175.)

Editorial Notes

AMENDMENTS

1996—Pars. (5), (6). Pub. L. 104-105 redesignated par. (6) as (5) and struck out heading and text of former par. (5). Text read as follows: “The term ‘receiver’ means a receiver or conservator appointed by the Farm Credit Administration for a System institution.”

1988—Par. (3)(A), (B). Pub. L. 100-399, § 302(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

“(A) on or before January 6, 1988, on behalf of any System bank; and

“(B) after such date, on behalf of any insured System bank.”

Par. (5). Pub. L. 100-399, § 302(b), substituted “for” for “to liquidate”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-399 effective as if enacted immediately after enactment of Pub. L. 100-233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100-399, set out as a note under section 2002 of this title.

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 2277a-1. Establishment of Farm Credit System Insurance Corporation

There is hereby established the Farm Credit System Insurance Corporation which shall insure, in accordance with this part, the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 2153 of this title on behalf of one or more System banks all of which are entitled to the benefits of insurance under this part.

(Pub. L. 92-181, title V, § 5.52, as added Pub. L. 100-233, title III, § 302, Jan. 6, 1988, 101 Stat. 1611.)

§ 2277a-2. Board of Directors

(a) Establishment

The Corporation shall be managed by a Board of Directors that shall consist of the members of the Farm Credit Administration Board.

(b) Chairman

The Board of Directors shall be chaired by any Board member other than the Chairman of the Farm Credit Administration Board.

(Pub. L. 92-181, title V, § 5.53, as added Pub. L. 100-233, title III, § 302, Jan. 6, 1988, 101 Stat. 1611; amended Pub. L. 102-552, title II, § 201(a), Oct. 28, 1992, 106 Stat. 4104; Pub. L. 104-105, title II, § 219(a), Feb. 10, 1996, 110 Stat. 184.)

Editorial Notes

AMENDMENTS

1996—Pub. L. 104-105 amended section generally. Prior to amendment, section related to Board of Directors, including provisions relating to establishment, appointment, chairperson, postemployment prohibition, terms of office, succession, vacancies, oath, quorum, meetings, rules and records, compensation, and expenses.

1992—Pub. L. 102-552 amended section generally. Prior to amendment, section read as follows:

“(a) ESTABLISHMENT.—The Corporation shall be managed by a Board of Directors that shall consist of the members of the Farm Credit Administration Board.

“(b) CHAIRMAN.—The Board of Directors shall be chaired by any Board member other than the Chairman of the Farm Credit Administration Board.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT; TRANSITION PROVISION

Pub. L. 102-552, title II, § 201(c), Oct. 28, 1992, 106 Stat. 4105, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 5314 and 5315 of Title 5, Government Organization and Employees] shall become effective on January 1, 1996.

“(2) TRANSITIONAL PROVISION.—The Board of Directors of the Farm Credit System Insurance Corporation as established by section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a-2) (as it existed before the amendments made by subsection (a) of this section) shall continue in existence and continue to manage the Farm Credit System Insurance Corporation until at least two members are appointed by the President, by and with the advice and consent of the Senate, to the new Board established by section 5.53 of such Act (as amended by subsection (a) of this section).”

§ 2277a-3. Commencement of insurance

Effective beginning on January 1, 1989, or 12 months after January 6, 1988, whichever is later, each System bank shall be an insured System bank and shall be subject to this part. Each System bank that is authorized to commence or resume operations under a subchapter of this chapter shall be an insured System bank from the time of such authorization. A bank resulting from the merger or consolidation of insured System banks shall be an insured System bank.

(Pub. L. 92-181, title V, §5.54, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1611.)

§ 2277a-4. Premiums

(a) Amount in Fund not exceeding secure base amount

(1) In general

If at the end of any calendar year the aggregate of amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, subject to paragraph (3), the premium due from any insured System bank for the calendar year shall be equal to the sum of—

(A) the average outstanding insured obligations issued by the bank for the calendar year, after deducting from the obligations the percentages of the guaranteed portions of loans and investments described in paragraph (2), multiplied by 0.0020; and

(B) the product obtained by multiplying—

(i) the sum of—

(I) the average principal outstanding for the calendar year on loans made by the bank that are in nonaccrual status; and

(II) the average amount outstanding for the calendar year of other-than-temporarily impaired investments made by the bank; by

(ii) 0.0010.

(2) Deductions from average outstanding insured obligations

The average outstanding insured obligations issued by the bank for the calendar year referred to in paragraph (1)(A) shall be reduced by deducting from the obligations the sum of (as determined by the Corporation)—

(A) 90 percent of each of—

(i) the average principal outstanding for the calendar year on the guaranteed portions of Federal government-guaranteed loans made by the bank that are in accrual status; and

(ii) the average amount outstanding for the calendar year of the guaranteed portions of Federal government-guaranteed investments made by the bank that are not permanently impaired; and

(B) 80 percent of each of—

(i) the average principal outstanding for the calendar year on the guaranteed portions of State government-guaranteed loans made by the bank that are in accrual status; and

(ii) the average amount outstanding for the calendar year of the guaranteed portions of State government-guaranteed investments made by the bank that are not permanently impaired.

(3) Reduced premiums

The Corporation, in the sole discretion of the Corporation, may reduce by a percentage uniformly applied to all insured System banks the premium due from each insured System bank during any calendar year, as determined under paragraph (1).

(4) Definition of government-guaranteed loans or investments

In this section, the term “government-guaranteed”, when applied to a loan or an investment, means a loan, credit, or investment, or portion of a loan, credit, or investment, that is guaranteed—

(A) by the full faith and credit of the United States Government or any State government;

(B) by an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or

(C) by an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.

(b) Amount in Fund exceeding secure base amount

At any time the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the Corporation shall reduce the premium due from each insured System bank, as determined under subsection (a)(1), by a percentage determined by the Corporation so that the aggregate of the premiums payable by all System banks is sufficient to ensure that the aggregate of amounts in the Farm Credit Insurance Fund after such premiums are paid is not less than the secure base amount at such time.

(c) Secure base amount

(1) In general

For purposes of this part, the term “secure base amount” means, with respect to any point in time, 2 percent of the aggregate outstanding insured obligations of all insured System banks at such time (as adjusted under paragraph (2)), or such other percentage of the aggregate amount as the Corporation in its sole discretion determines is actuarially sound to maintain in the Insurance Fund taking into account the risk of insuring outstanding insured obligations.

(2) Adjustment

The aggregate outstanding insured obligations of all insured System banks under para-

graph (1) shall be adjusted downward to exclude an amount equal to the sum of (as determined by the corporation)—

(A) 90 percent of each of—

(i) the guaranteed portions of principal outstanding on Federal government-guaranteed loans in accrual status made by the banks; and

(ii) the guaranteed portions of the amount of Federal government-guaranteed investments made by the banks that are not permanently impaired; and

(B) 80 percent of each of—

(i) the guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by the banks; and

(ii) the guaranteed portions of the amount of State government-guaranteed investments made by the banks that are not permanently impaired.

(d) Determination of loan and investment amounts

For the purpose of subsections (a) and (c), the principal outstanding on all loans made by an insured System bank, and the amount outstanding on all investments made by an insured System bank, shall be determined based on—

(1) all loans or investments made by any production credit association, or any other association making direct loans under authority provided under section 2279b of this title, that is able to make such loans or investments because such association is receiving, or has received, funds provided through the insured System bank;

(2) all loans or investments made by any bank, company, institution, corporation, union, or association described in section 2015(b)(1)(B) of this title, that is able to make such loans or investments because such entity is receiving, or has received, funds provided through the insured System bank; and

(3) all loans or investments made by such insured System bank (other than loans made to any party described in paragraph (1) or (2)).

(e) Allocation to System institutions of excess reserves

(1) Establishment of Allocated Insurance Reserves Accounts

There is hereby established in the Farm Credit Insurance Fund an Allocated Insurance Reserves Account—

(A) for each insured System bank; and

(B) subject to paragraph (6)(C), for all holders, in the aggregate, of Financial Assistance Corporation stock.

(2) Treatment

Amounts in any Allocated Insurance Reserves Account shall be considered to be part of the Farm Credit Insurance Fund.

(3) Annual allocations

If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the Corporation shall allocate to the Allocated Insurance Reserves Accounts the excess amount less the amount that the Corporation,

in its sole discretion, determines to be the sum of the estimated operating expenses and estimated insurance obligations of the Corporation for the immediately succeeding calendar year.

(4) Allocation formula

From the total amount required to be allocated at the end of a calendar year under paragraph (3)—

(A) 10 percent of the total amount shall be credited to the Allocated Insurance Reserves Account established under paragraph (1)(B), subject to paragraph (6)(C); and

(B) there shall be credited to the allocated insurance reserves account¹ of each insured system² bank an amount that bears the same ratio to the total amount (less any amount credited under subparagraph (A)) as—

(i) the average principal outstanding for the calendar year on insured obligations issued by the bank (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in subsection (a)(2)); bears to

(ii) the average principal outstanding for the calendar year on insured obligations issued by all insured System banks (after deducting from the principal the percentages of the guaranteed portions of loans and investments described in subsection (a)(2)).

(5) Use of funds in Allocated Insurance Reserves Accounts

To the extent that the sum of the operating expenses of the Corporation and the insurance obligations of the Corporation for a calendar year exceeds the sum of operating expenses and insurance obligations determined under paragraph (3) for the calendar year, the Corporation shall cover the expenses and obligations by—

(A) reducing each Allocated Insurance Reserves Account by the same proportion; and

(B) expending the amounts obtained under subparagraph (A) before expending other amounts in the Fund.

(6) Other disposition of Account funds

(A) In general

As soon as practicable during each calendar year, the Corporation may—

(i) subject to subparagraph (D), pay to each insured System bank, in a manner determined by the Corporation, an amount equal to the balance in the Allocated Insurance Reserves Account of the System bank; and

(ii) subject to subparagraphs (C) and (E), pay to each System bank and association holding Financial Assistance Corporation stock a proportionate share, determined by dividing the number of shares of Financial Assistance Corporation stock held by the institution by the total number of shares of Financial Assistance Corporation

¹ So in original. Probably should be "Allocated Insurance Reserves Account".

² So in original. Probably should be "System".

stock outstanding at the time of the termination of the Financial Assistance Corporation, of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B).

(B) Authority to eliminate or reduce payments

The Corporation may eliminate or reduce payments during a calendar year under subparagraph (A) if the Corporation determines, in its sole discretion, that the payments, or other circumstances that might require use of the Farm Credit Insurance Fund, could cause the amount in the Farm Credit Insurance Fund during the calendar year to be less than the secure base amount.

(C) Reimbursement for Financial Assistance Corporation stock

(i) Sufficient funding

Notwithstanding paragraph (4)(A), on provision by the Corporation for the accumulation in the Account established under paragraph (1)(B) of funds in an amount equal to \$56,000,000, the Corporation shall not allocate any further funds to the Account except to replenish the Account if funds are diminished below \$56,000,000 by the Corporation under paragraph (5).

(ii) Termination of account

On disbursement of an amount equal to \$56,000,000, the Corporation shall—

(I) close the account established under paragraph (1)(B); and

(II) transfer any remaining funds in the Account to the remaining Allocated Insurance Reserves Accounts in accordance with paragraph (4)(B) for the calendar year in which the transfer occurs.

(D) Distribution of payments received

Not later than 60 days after receipt of a payment made under subparagraph (A)(i), each insured System bank, in consultation with affiliated associations of the insured System bank, and taking into account the direct or indirect payment of insurance premiums by the associations, shall develop and implement an equitable plan to distribute payments received under subparagraph (A)(i) among the bank and associations of the bank.

(E) Exception for previously reimbursed associations

For purposes of subparagraph (A)(ii), in any Farm Credit district in which the funding bank has reimbursed 1 or more affiliated associations of the bank for the previously unreimbursed portion of the Financial Assistance Corporation stock held by the associations, the funding bank shall be deemed to be the holder of the shares of Financial Assistance Corporation stock for which the funding bank has provided the reimbursement.

(Pub. L. 92-181, title V, §5.55, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1612; amended Pub. L. 100-399, title III, §302(c)-(e), Aug. 17, 1988, 102 Stat. 994; Pub. L. 101-220, §6(a),

Dec. 12, 1989, 103 Stat. 1879; Pub. L. 104-105, title II, §215(a)(1), (2)(A), (b), (c), Feb. 10, 1996, 110 Stat. 175, 176, 179; Pub. L. 107-171, title V, §5403(a)(1), May 13, 2002, 116 Stat. 350; Pub. L. 110-234, title V, §5404, May 22, 2008, 122 Stat. 1154; Pub. L. 110-246, §4(a), title V, §5404, June 18, 2008, 122 Stat. 1664, 1916.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-246, §5404(a)(1)(A), in introductory provisions, substituted “paragraph (3)” for “paragraph (2)” and struck out “annual” before “premium”.

Subsec. (a)(1)(A) to (D). Pub. L. 110-246, §5404(a)(1)(B), added subpars. (A) and (B) and struck out former subpars. (A) to (D) which described how to calculate the annual premium due from an insured System bank.

Subsec. (a)(2) to (4). Pub. L. 110-246, §5404(a)(2)-(6), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, in par. (3), struck out “annual” before “premium”, in par. (4), inserted “or investments” after “loans” in heading and, in introductory provisions, substituted “In this section, the term ‘government-guaranteed’, when applied to a loan or an investment, means a loan, credit, or investment, or portion of a loan, credit, or investment, that is guaranteed—” for “As used in this section and section 2020(b) of this title, the term ‘government-guaranteed loans’ means loans or credits, or portions of loans or credits, that are guaranteed—”, and struck out former par. (4). Prior to amendment, text read as follows: “In this section and sections 2020(b) and 2277a-5(a) of this title, the term ‘Government Sponsored Enterprise-guaranteed loan’ means a loan or credit, or portion of a loan or credit, that is guaranteed by an entity that is chartered by Congress to serve a public purpose and the debt obligations of which are not explicitly guaranteed by the United States, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, and the Federal Agricultural Mortgage Corporation, but not including any other institution of the Farm Credit System.”

Subsec. (b). Pub. L. 110-246, §5404(b), struck out “annual” before “premium”.

Subsec. (c). Pub. L. 110-246, §5404(c), designated existing provisions as par. (1), inserted heading, substituted “(as adjusted under paragraph (2))” for “(adjusted downward to exclude an amount equal to the sum of (1) 90 percent of the guaranteed portions of principal outstanding on Federal Government-guaranteed loans in accrual status made by such banks and (2) 80 percent of the guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by such banks, as determined by the Corporation)”, and added par. (2).

Subsec. (d). Pub. L. 110-246, §5404(d)(1), (2), in heading, substituted “loan and investment amounts” for “principal outstanding” and, in introductory provisions, substituted “For the purpose of subsections (a) and (c), the principal outstanding on all loans made by an insured System bank, and the amount outstanding on all investments made by an insured System bank, shall be determined based on—” for “For the purpose of subsections (a), (c), and (e) of this section, the principal outstanding on all loans made by an insured System bank shall be determined based on all loans made—”.

Subsec. (d)(1) to (3). Pub. L. 110-246, §5404(d)(3), (4), in pars. (1) to (3), inserted “all loans or investments made” after par. designation and, in pars. (1) and (2), inserted “or investments” after “such loans”.

Subsec. (e)(3). Pub. L. 110-246, §5404(e)(1), substituted “the secure base amount” for “the average secure base amount for the calendar year (as calculated on an average daily balance basis)”.

Subsec. (e)(4)(B). Pub. L. 110-246, §5404(e)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: “there shall be credited to the Allocated Insurance Reserves Account of each insured System bank an amount that bears the same ratio to the total amount (less any amount credited under subparagraph (A)) as the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by the bank that are in accrual status bears to the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by all insured System banks that are in accrual status (excluding, in each case, the guaranteed portions of loans described in subparagraph (C) or (D) of subsection (a)(1) of this section).”

Subsec. (e)(6)(A). Pub. L. 110-246, §5404(e)(3)(A)(i), struck out “beginning more than 8 years after the date on which the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, but not earlier than January 1, 2005” after “calendar year” in introductory provisions.

Subsec. (e)(6)(A)(i). Pub. L. 110-246, §5404(e)(3)(A)(ii), added cl. (i) and struck out former cl. (i) which read as follows: “subject to subparagraphs (D) and (F), pay to each insured System bank, in a manner determined by the Corporation, an amount equal to the lesser of—

“(I) 20 percent of the balance in the insured System bank’s Allocated Insurance Reserves Account as of the preceding December 31; or

“(II) 20 percent of the balance in the bank’s Allocated Insurance Reserves Account on the date of the payment; and”.

Subsec. (e)(6)(A)(ii). Pub. L. 110-246, §5404(e)(3)(A)(iii), substituted “subparagraphs (C) and (E)” for “subparagraphs (C), (E), and (F)” and “at the time of the termination of the Financial Assistance Corporation, of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B).” for “, of the lesser of—

“(I) 20 percent of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B) as of the preceding December 31; or

“(II) 20 percent of the balance in the Allocated Insurance Reserves Account established under paragraph (1)(B) on the date of the payment.”

Subsec. (e)(6)(C)(i). Pub. L. 110-246, §5404(e)(3)(B)(i), struck out “(in addition to the amounts described in subparagraph (F)(ii))” after “an amount equal to \$56,000,000”.

Subsec. (e)(6)(C)(ii). Pub. L. 110-246, §5404(e)(3)(B)(ii), added cl. (ii) and struck out former cl. (ii) which related to wind down and termination of the Allocated Insurance Reserves Account established under subsec. (e)(1) of this section.

Subsec. (e)(6)(F). Pub. L. 110-246, §5404(e)(3)(C), struck out subpar. (F) which related to determination of amount of initial payment made to each payee under subsec. (e)(6)(A) of this section.

2002—Subsec. (a)(1)(A). Pub. L. 107-171, §5403(a)(1)(A)(i), substituted “loans provided for in subparagraphs (C) and (D)” for “government-guaranteed loans provided for in subparagraph (C)”.

Subsec. (a)(1)(D). Pub. L. 107-171, §5403(a)(1)(A)(i)(II)–(IV), added subpar. (D).

Subsec. (a)(4). Pub. L. 107-171, §5403(a)(1)(A)(ii), added par. (4).

Subsec. (e)(4)(B). Pub. L. 107-171, §5403(a)(1)(B), substituted “loans described in subparagraph (C) or (D) of subsection (a)(1) of this section” for “government-guaranteed loans described in subsection (a)(1)(C) of this section”.

1996—Subsec. (a). Pub. L. 104-105, §215(a)(1)(A), substituted “If at the end of any calendar year the aggregate of amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, subject to paragraph (2), the annual premium due from any in-

sured System bank for the calendar year” for “Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year”.

Subsec. (a)(2), (3). Pub. L. 104-105, §215(a)(1)(B), (C), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 104-105, §215(a)(2)(A), substituted “Farm Credit Insurance Fund” for “Insurance Fund” in two places, and “subsection (a)(1)” for “subsection (a)”, and struck out “for the following calendar year” after “each insured System bank”.

Subsec. (d). Pub. L. 104-105, §215(c), in introductory provisions, substituted “subsections (a), (c), and (e) of this section” for “subsections (a) and (c) of this section” and “an insured System bank” for “a Farm Credit Bank”, and in pars. (1) through (3), substituted “insured System bank” for “Farm Credit Bank”.

Subsec. (e). Pub. L. 104-105, §215(b), added subsec. (e). 1989—Subsec. (a). Pub. L. 101-220, §6(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year shall be equal to the sum of—

“(1) the annual average principal outstanding for such year on loans made by the bank that are in accrual status, multiplied by 0.0015; and

“(2) the annual average principal outstanding for such year on loans made by the bank that are in non-accrual status, multiplied by 0.0025.”

Subsec. (b). Pub. L. 101-220, §6(a)(2), inserted “, as determined under subsection (a),” after “calendar year”.

Subsec. (c). Pub. L. 101-220, §6(a)(3), inserted “(adjusted downward to exclude an amount equal to the sum of (1) 90 percent of the guaranteed portions of principal outstanding on Federal Government-guaranteed loans in accrual status made by such banks and (2) 80 percent of the guaranteed portions of principal outstanding on State government-guaranteed loans in accrual status made by such banks, as determined by the Corporation)” after “such time”.

Subsec. (d). Pub. L. 101-220, §6(a)(4), in introductory provisions, substituted “subsections (a) and (c) of this section” for “subsection (a) of this section” and struck out “intermediate term” after “outstanding on all”, inserted par. (1), and struck out former par. (1) which read as follows: “by the production credit associations in the district in which such bank is located.”.

1988—Subsec. (d). Pub. L. 100-399, §302(c), substituted in introductory provisions “intermediate term loans made by a Farm Credit Bank” for “loans made by a Federal intermediate credit bank”.

Subsec. (d)(2). Pub. L. 100-399, §302(d), (e), substituted “section 2015(b)(1)(B) of this title” for “section 2074(a)(2) of this title” and “Farm Credit Bank” for “Federal intermediate credit bank”.

Subsec. (d)(3). Pub. L. 100-399, §302(e), substituted “Farm Credit Bank” for “Federal intermediate credit bank”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-171 applicable with respect to determinations of premiums for calendar year 2002 and for any succeeding calendar year, and to certified statements with respect to such premiums, see section 5403(b) of Pub. L. 107-171, set out as a note under section 2020 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-220 effective for insurance premiums due to the Farm Credit System Insurance

Corporation under this chapter on or after Jan. 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and effective for the calculation of the initial premium payment required under section 2277a-5(c) of this title, see section 6(c) of Pub. L. 101-220, set out as a note under section 2020 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-399 effective immediately after amendment made by section 401 of Pub. L. 100-233, which was effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100-399, set out as a note under section 2002 of this title.

GAO REPORTS ON RISK-BASED INSURANCE PREMIUMS, ACCESS TO ASSOCIATION CAPITAL, SUPPLEMENTAL PREMIUMS, AND CONSOLIDATION

Pub. L. 102-552, title II, §204, Oct. 28, 1992, 106 Stat. 4106, as amended by Pub. L. 104-316, title I, §106(e), Oct. 19, 1996, 110 Stat. 3831, provided for a report by the Comptroller General on risk-based insurance premiums, structure and capital, and another report on benefits to farmer and rancher borrowers of the Farm Credit System institutions of merging the 10 district Farm Credit Banks (and the Federal Intermediate Credit Bank of Jackson) into fewer regional Farm Credit Banks, and provided that the reports were to be provided to Congress not later than 12 months after Oct. 28, 1992.

§ 2277a-5. Certification of premiums

(a) Filing certified statement

On a date to be determined in the sole discretion of the Board of Directors of the Corporation, each insured System bank that became insured before the beginning of the period for which premiums are being assessed (referred to in this section as the “period”) shall file with the Corporation a certified statement showing—

(1) the average outstanding insured obligations for the period issued by the bank;

(2)(A) the average principal outstanding for the period on the guaranteed portion of Federal government-guaranteed loans that are in accrual status; and

(B) the average amount outstanding for the period of Federal government-guaranteed investments that are not permanently impaired (as defined in section 2277a-4(a)(4) of this title);

(3)(A) the average principal outstanding for the period on State government-guaranteed loans that are in accrual status; and

(B) the average amount outstanding for the period of State government-guaranteed investments that are not permanently impaired (as defined in section 2277a-4(a)(4) of this title);

(4)(A) the average principal outstanding for the period on loans that are in nonaccrual status; and

(B) the average amount outstanding for the period of other-than-temporarily impaired investments; and

(5) the amount of the premium due the Corporation from the bank for the period.

(b) Contents and form of statement

The certified statement required to be filed with the Corporation under subsection (a) shall be in such form and set forth such supporting information as the Board of Directors shall prescribe, and shall be certified by the president of the bank or any other officer designated by its

board of directors that to the best of the person's knowledge and belief the statement is true, correct, complete, and has been prepared in accordance with this part and all regulations issued thereunder.

(c) Premium payments

(1) In general

Except as provided in paragraph (2), each insured System bank shall pay to the Corporation the premium payments required under subsection (a), not more frequently than once in each calendar quarter, in such manner and at such 1 or more times as the Board of Directors shall prescribe.

(2) Premium amount

The amount of the premium shall be established not later than 60 days after filing the certified statement specifying the amount of the premium.

(d) Regulations

The Board of Directors shall prescribe all rules and regulations necessary for the enforcement of this section. The Board of Directors may limit the retroactive effect, if any, of any of its rules or regulations.

(Pub. L. 92-181, title V, §5.56, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1612; amended Pub. L. 100-399, title III, §302(f), Aug. 17, 1988, 102 Stat. 994; Pub. L. 101-624, title XVIII, §1835, Nov. 28, 1990, 104 Stat. 3833; Pub. L. 104-105, title II, §215(a)(2)(B), Feb. 10, 1996, 110 Stat. 176; Pub. L. 107-171, title V, §5403(a)(2)(B), May 13, 2002, 116 Stat. 351; Pub. L. 110-234, title V, §5405, May 22, 2008, 122 Stat. 1157; Pub. L. 110-246, §4(a), title V, §5405, June 18, 2008, 122 Stat. 1664, 1919.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-246, §5405(a), added subsec. (a) and struck out former subsec. (a) which related to the required annual filing of a certified statement from each insured System bank that became insured before the beginning of the year.

Subsec. (c). Pub. L. 110-246, §5405(b), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “Each System bank shall pay to the Corporation the amount of the initial premium it is required to certify under subsection (a) of this section as soon as practicable after January 1, 1990, based on the application of section 2277a-4 of this title to the accruing loan volume of the bank for calendar year 1989.”

Subsecs. (d), (e). Pub. L. 110-246, §5405(c), redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: “The premium payments required from insured System banks under subsection (a) of this section shall be made not less frequently than annually in such manner and at such time or times as the Board of Directors shall prescribe, except that the amount of the premium shall be established not later than 60 days after filing the certified statement setting forth the amount of the premium.”

2002—Subsec. (a)(1). Pub. L. 107-171, §5403(a)(2)(B)(i), inserted “and Government Sponsored Enterprise-guar-

anteed loans (as defined in section 2277a-4(a)(4) of this title)" after "government-guaranteed loans".

Subsec. (a)(4) to (6). Pub. L. 107-171, § 5403(a)(2)(B)(ii), (iii), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1996—Subsec. (a)(2), (3). Pub. L. 104-105 substituted "2277a-4(a)(3) of this title" for "2277a-4(a)(2) of this title".

1990—Subsec. (a). Pub. L. 101-624 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Annually, on a date to be determined in the sole discretion of the Board of Directors, each insured System bank that became insured before the beginning of the year shall file with the Corporation a certified statement showing the annual average principal outstanding on loans made by the bank that are in accrual status, the annual average principal outstanding on loans that are in nonaccrual status, and the amount of the premium due the Corporation from the bank for such year."

1988—Subsec. (a). Pub. L. 100-399 substituted "of the year" for "of such year".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-171 applicable with respect to determinations of premiums for calendar year 2002 and for any succeeding calendar year, and to certified statements with respect to such premiums, see section 5403(b) of Pub. L. 107-171, set out as a note under section 2020 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-399 effective as if enacted immediately after enactment of Pub. L. 100-233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100-399, set out as a note under section 2002 of this title.

§ 2277a-6. Overpayment and underpayment of premiums; remedies

(a) Overpayments

The Corporation may refund to any insured System bank any premium payment made by the bank exceeding the amount due the Corporation.

(b) Underpayments

(1) Recovery

The Corporation, in a suit brought at law or in equity in any court of competent jurisdiction, may recover from any insured System bank the amount of any unpaid premium lawfully payable by the bank to the Corporation, whether or not the bank has filed any certified statement under section 2277a-5 of this title, and whether or not suit has been brought to compel the bank to file any such statement.

(2) Limitation

Any action or proceeding for the recovery of any premium due the Corporation under paragraph (1), or for the recovery of any amount paid to the Corporation exceeding the amount due the Corporation, shall be brought within 5 years after the right accrued for which the claim is made. If an insured System bank has filed with the Corporation a false or fraudulent

certified statement with the intent to evade, in whole or in part, the payment of a premium, the claim shall not be deemed to have accrued until the Corporation discovers that the certified statement is false or fraudulent.

(c) Failure to file statement or pay premium

(1) Forfeiture of rights

If any insured System bank fails to file any certified statement required to be filed by such bank under section 2277a-5 of this title or fails to pay any premium required to be paid by such bank under any provision of this part, and if the bank does not correct such failure within 30 days after the Corporation gives written notice to an officer of the bank, citing this subsection and stating that the bank has failed to so file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under this chapter shall be thereby forfeited.

(2) Enforcement

The Corporation may bring an action to enforce this subsection against any such bank in any court of competent jurisdiction for the judicial district in which the bank is located.

(3) Liability of directors

Every director who participated in or assented to a failure (described in paragraph (1)) shall be held personally liable for all consequential damages.

(d) Effect on other remedies

The remedies provided in subsections (b) and (c) shall not be construed as limiting any other remedies against any insured System bank, but shall be in addition thereto.

(Pub. L. 92-181, title V, § 5.57, as added Pub. L. 100-233, title III, § 302, Jan. 6, 1988, 101 Stat. 1613; amended Pub. L. 100-399, title III, § 302(g), (h), Aug. 17, 1988, 102 Stat. 994.)

Editorial Notes

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100-399, § 302(g), struck out "made any report of condition required under section 2277a-4 of this title or" after "bank has" and "make any such report or" after "bank to".

Subsec. (b)(2). Pub. L. 100-399, § 302(h), substituted "bank has filed" for "bank has made or filed".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-399 effective as if enacted immediately after enactment of Pub. L. 100-233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100-399, set out as a note under section 2002 of this title.

§ 2277a-7. General corporate powers

On January 6, 1988, the Corporation shall become a body corporate and as such shall have the following powers:

(1) Seal

The Corporation may adopt and use a corporate seal.

(2) Succession

The Corporation may have succession until dissolved by an Act of Congress.

(3) Contracts

The Corporation may make contracts.

(4) Legal actions**(A) In general**

The Corporation may sue and be sued, complain and defend, in any court of law or equity, State or Federal.

(B) Jurisdiction

All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy, and the Corporation, in any capacity, without bond or security, may remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal then in effect.

(C) Attachment and execution

No attachment or execution may be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court.

(D) Agent for service of process

The Board of Directors shall designate an agent on whom service of process may be made in any State or jurisdiction in which any insured System bank is located.

(5) Officers and employees**(A) In general**

The Corporation may appoint by its Board of Directors such officers and employees as are not otherwise provided for in this part, define their duties, fix their compensation, and require bonds of them and fix the penalty thereof, and dismiss at pleasure such officers or employees.

(B) Employees of the United States

Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation, as an officer or employee of the Corporation, of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

(6) Bylaws

The Corporation may prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

(7) Incidental powers

The Corporation may exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this part, and such incidental powers as shall be necessary to carry out the powers so granted.

(8) Information

The Corporation may, when necessary, make examinations of, and require information and

reports from, System institutions, as provided in this part.

(9) Conservator or receiver

The Corporation may act as a conservator or receiver.

(10) Rules and regulations

The Corporation may prescribe by its Board of Directors such rules and regulations as it considers necessary to carry out this part and section 2020(b) of this title (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(Pub. L. 92-181, title V, §5.58, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1614; amended Pub. L. 100-399, title III, §302(i), Aug. 17, 1988, 102 Stat. 994; Pub. L. 102-237, title V, §502(j), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102-552, title II, §202(a), Oct. 28, 1992, 106 Stat. 4105; Pub. L. 104-105, title II, §214(b), Feb. 10, 1996, 110 Stat. 175; Pub. L. 110-234, title V, §5401(b), May 22, 2008, 122 Stat. 1154; Pub. L. 110-246, §4(a), title V, §5401(b), June 18, 2008, 122 Stat. 1664, 1915; Pub. L. 115-334, title V, §5411(37), Dec. 20, 2018, 132 Stat. 4683.)

Editorial Notes**CODIFICATION**

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2018—Par. (2). Pub. L. 115-334 struck out at end “The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to subchapter VI on the termination of the Assistance Board on the date provided in section 2278a-12 of this title.”

2008—Par. (10). Pub. L. 110-246, §5401(b), inserted “and section 2020(b) of this title” after “this part”.

1996—Par. (9). Pub. L. 104-105 added par. (9) and struck out heading and text of former par. (9). Text read as follows: “The Corporation may act as receiver.”

1992—Par. (2). Pub. L. 102-552 inserted at end “The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to subchapter VI on the termination of the Assistance Board on the date provided in section 2278a-12 of this title.”

1991—Par. (4)(B). Pub. L. 102-237 inserted “in any capacity,” after “and the Corporation,”.

1988—Par. (5)(A). Pub. L. 100-399 struck out “to” before “define” and “dismiss”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-399 effective as if enacted immediately after enactment of Pub. L. 100-233, which

was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100-399, set out as a note under section 2002 of this title.

§ 2277a-8. Conduct of corporate affairs; examination of System institutions

(a) Conduct of corporate affairs

(1) Fair administration

The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination.

(2) Obligations and expenses

The Board of Directors shall determine and prescribe the manner in which the obligations of the Corporation may be incurred and the expenses of the Corporation may be allowed and paid.

(3) Use of mails

The Corporation may use the United States mails in the same manner and under the same conditions as the executive departments of the Federal Government.

(4) Use of information

The Corporation, with the consent of any board, commission, independent establishment, or executive department of the Federal Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out this part.

(5) Use of Farm Credit Administration personnel

To the extent practicable, the Corporation shall use the personnel and resources of the Farm Credit Administration to minimize duplication of effort and to reduce costs.

(b) Examination of System institutions

(1) Examination authority

(A) In general

If the Board of Directors considers it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 2279b of this title, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration. Notwithstanding any other provision of this chapter, on cancellation of the charter of a System institution, the Corporation shall have authority to examine the system¹ institution in receivership. An examination shall be performed at such intervals as the Corporation shall determine.

(B) Request for additional examination or other information

If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this subsection, the Board shall request the Farm Credit Admin-

istration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

(2) Appointment of examiners

If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

(3) Powers and report

Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

(4) Appointment of claim agents

The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.

(c) Oath, affirmations, and testimony

In connection with examinations under this section, the Corporation or its designated representatives may administer oaths and affirmations, and may examine, take, and preserve testimony under oath, as to any matter with respect to the affairs of any such institution.

(d) Cooperation with FCA examiners

The examiners appointed by the Board of Directors shall cooperate to the maximum extent possible with examiners of the Farm Credit Administration to minimize duplication of effort and minimize costs.

(Pub. L. 92-181, title V, §5.59, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1615; amended Pub. L. 101-220, §6(b)(3), Dec. 12, 1989, 103 Stat. 1880; Pub. L. 102-552, title II, §203, title V, §513(a), Oct. 28, 1992, 106 Stat. 4106, 4133; Pub. L. 104-105, title II, §216, Feb. 10, 1996, 110 Stat. 179.)

Editorial Notes

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104-105 inserted at end “Notwithstanding any other provision of this chapter, on cancellation of the charter of a System institution, the Corporation shall have authority to examine the system institution in receivership. An examination shall be performed at such intervals as the Corporation shall determine.”

1992—Pub. L. 102-552, §513(a)(1), substituted “System institutions” for “insured System banks” in section catchline.

Subsec. (a)(5). Pub. L. 102-552, §203, added par. (5).

Subsec. (b). Pub. L. 102-552, §513(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “(b) EXAMINATION OF INSURED SYSTEM BANKS.—

“(1) APPOINTMENT OF EXAMINERS.—The Board of Directors may appoint examiners who may, on behalf of the Corporation, examine any insured System bank, any production credit association, any other association making direct loans under authority provided under section 2279b of this title, and any System institution in receivership, if in the judgment of the Board of Directors an examination of the institution is necessary.

¹ So in original. Probably should be capitalized.

“(2) POWERS AND REPORT.—Each examiner may make a thorough examination of all affairs of the institution, and shall make a full and detailed report of the condition of the institution to the Corporation.

“(3) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors, in like manner, shall appoint claim agents who may investigate and examine all claims for insured obligations.”

1989—Subsec. (b)(1). Pub. L. 101-220 inserted “any other association making direct loans under authority provided under section 2279b of this title,” after “any production credit association.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-220 effective for insurance premiums due to the Farm Credit System Insurance Corporation under this chapter on or after Jan. 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and effective for the calculation of the initial premium payment required under section 2277a-5(c) of this title, see section 6(c) of Pub. L. 101-220, set out as a note under section 2020 of this title.

§ 2277a-9. Insurance Fund

(a) Establishment

There is hereby established a Farm Credit Insurance Fund (hereinafter referred to in this section as the “Insurance Fund”) for insuring the timely payment of principal and interest on insured obligations. The assets in the Fund shall be held by the Corporation for the uses and purposes of the Corporation.

(b) Amounts in Fund

The Corporation shall deposit in the Insurance Fund all premium payments received by the Corporation under this part.

(c) Uses of Fund

(1) Mandatory use

Beginning January 1, 1993, the Corporation shall expend amounts in the Insurance Fund to the extent necessary to insure the timely payment of interest and principal on insured obligations.

(2) Other mandatory uses

Beginning January 1, 1993, the Corporation shall use amounts in the Insurance Fund to ensure the retirement of eligible borrower stock at par value under section 2162 of this title.

(3) Permissive uses

The Corporation may expend amounts in the Insurance Fund to carry out section 2277a-10 of this title and to cover the operating costs of the Corporation.

(4) Corporate payment or refunds

The Corporation shall make all payments and refunds required to be made by the Corporation under this part from amounts in the Insurance Fund.

(Pub. L. 92-181, title V, §5.60, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1616; amended Pub. L. 100-399, title III, §302(j)-(l), Aug. 17, 1988, 102 Stat. 994; Pub. L. 101-624, title XVIII, §1836(a), Nov. 28, 1990, 104 Stat. 3833; Pub. L. 115-334, title V, §5411(38), Dec. 20, 2018, 132 Stat. 4683.)

Editorial Notes

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-334, §5411(38)(A), struck out par. (2) designation and heading before “The Corporation” and struck out par. (1) which provided for transfer of amounts in the revolving fund into the Farm Credit Insurance Fund, with exception for transactions before Jan. 6, 1988.

Subsec. (c)(2). Pub. L. 115-334, §5411(38)(B), substituted “Insurance Fund to ensure” for “Insurance Fund to—

“(A) satisfy System institution defaults through the purchase of preferred stock or other payments as provided for in section 2278b-6(d)(3) of this title; and

“(B) ensure”.

1990—Subsec. (c)(1), (2). Pub. L. 101-624 substituted “January 1, 1993” for “5 years after the date of the enactment of this part” in par. (1) and for “5 years after the date of enactment of this part” in par. (2).

1988—Subsec. (b)(1). Pub. L. 100-399, §302(j), struck out “(in effect immediately before January 6, 1988)” after “section 2151 of this title”.

Subsec. (b)(2). Pub. L. 100-399, §302(k), substituted “The” for “Beginning 5 years after January 6, 1988, the”.

Subsec. (c)(2)(B). Pub. L. 100-399, §302(l), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “ensure the retirement of borrower stock at par value and participation certificates or other similar equities at face value as provided for under section 2162(c)(2) of this title.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-399 effective as if enacted immediately after enactment of Pub. L. 100-233, which was approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100-399, set out as a note under section 2002 of this title.

§ 2277a-10. Powers of Corporation with respect to troubled insured System banks

(a) Authority to provide assistance

(1) Stand-alone assistance

The Corporation, in its sole discretion and on such terms and conditions as the Board of Directors may prescribe, may make loans to, purchase the assets or securities of, assume the liabilities of, or make contributions to, any insured System bank if such action is taken—

(A) to prevent the placing of the bank in receivership;

(B) to restore the bank to normal operation; or

(C) to reduce the risk to the Corporation posed by the bank when severe financial conditions threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources.

(2) Facilitation of mergers or consolidation

(A) In general

To facilitate a merger or consolidation of a qualifying insured System bank, the sale of assets of such insured System bank to another insured System bank, the assumption of such insured System bank's liabilities by such other insured System bank, or the acquisition of the stock of such insured System bank by such other insured System bank, the Corporation, in its sole discretion

and on such terms and conditions as the Board of Directors may prescribe, may—

- (i) purchase any such assets or assume any such liabilities;
- (ii) make loans or contributions to, or purchase debt securities of, such other insured System bank;
- (iii) guarantee such other insured System bank against loss by reason of such other insured System bank's merging or consolidating with, or assuming the liabilities and purchasing the assets of, such insured System bank; or
- (iv) take any combination of the actions referred to in the preceding clauses.

(B) Qualifying insured System bank

For purposes of subparagraph (A), the term “qualifying insured System bank” means any insured System bank that—

- (i) is in receivership;
- (ii) is, in the judgment of the Board of Directors, in danger of being placed in receivership; or
- (iii) is, in the sole discretion of the Corporation, an insured System bank that, when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, requires assistance under subparagraph (A) to lessen the risk to the Corporation posed by such insured System bank under such threat of instability.

(3) Limitation

(A) Least-cost resolution

Assistance may not be provided to an insured System bank under this subsection unless the means of providing the assistance is the least costly means of providing the assistance by the Farm Credit Insurance Fund of all possible alternatives available to the Corporation, including liquidation of the bank (including paying the insured obligations issued on behalf of the bank). Before making a least-cost determination under this subparagraph, the Corporation shall accord such other insured System banks as the Corporation determines to be appropriate the opportunity to submit information relating to the determination.

(B) Determining least costly approach

In determining the least costly alternative under subparagraph (A), the Corporation shall—

- (i) evaluate alternatives on a present-value basis, using a reasonable discount rate;
- (ii) document the evaluation and the assumptions on which the evaluation is based; and
- (iii) retain the documentation for not less than 5 years.

(C) Time of determination

(i) General rule

For purposes of this subsection, the determination of the costs of providing any assistance under any provision of this sec-

tion with respect to any insured System bank shall be made as of the date on which the Corporation makes the determination to provide the assistance to the institution under this section.

(ii) Rule for liquidations

For purposes of this subsection, the determination of the costs of liquidation of any insured System bank shall be made as of the earliest of—

- (I) the date on which a conservator is appointed for the insured System bank;
- (II) the date on which a receiver is appointed for the insured System bank; or
- (III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to the insured System bank.

(D) Rule for stand-alone assistance

Before providing any assistance under paragraph (1), the Corporation shall evaluate the adequacy of managerial resources of the insured System bank. The continued service of any director or senior ranking officer who serves in a policymaking role for the assisted insured System bank, as determined by the Corporation, shall be subject to approval by the Corporation as a condition of assistance.

(E) Discretionary determinations

Any determination that the Corporation makes under this paragraph shall be in the sole discretion of the Corporation.

(F) Purchase of stock

The Corporation may not use its authority under this subsection to purchase any stock of an insured System bank. The preceding sentence shall not be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect the financial interests of the Corporation.

(4) Subordination

Any assistance provided under this subsection may be in subordination to the rights of owners of obligations and other creditors.

(5) Reports

The Corporation, in its annual report to Congress, shall report the total amount saved, or it estimates to be saved, by the Corporation exercising the authority provided to the Corporation in this subsection.

(b) Authority to pledge or sell assets

The Corporation, in its discretion, may make loans on the security of, or may purchase, and liquidate or sell, any part of the assets of, any insured System bank that is placed in receivership because of the inability of the bank to pay principal or interest on any of its notes, bonds, debentures, or other obligations in a timely manner.

(c) Subrogation

(1) In general

On the payment to an owner of an insured obligation issued on behalf of an insured Sys-

tem bank in receivership, the Corporation shall be subrogated to all rights of the owner against the bank to the extent of the payment.

(2) Receipt of dividends

Subrogation under paragraph (1) shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of the bank as would have been payable to the owner on a claim for the insured obligation.

(d) Right to assets

Any agreement that shall diminish or defeat the right, title, or interest of the Corporation in any asset acquired by such Corporation under this section, either as security for a loan or by purchase, shall not be valid against the Corporation unless the agreement—

- (1) is in writing;
- (2) is executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank;
- (3) has been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of the board or committee; and
- (4) has been, continuously, from the time of its execution, an official record of the bank.

(e) Insured System bank

As used in this section, the terms “insured System bank” and “bank” include each production credit association and other association making direct loans under the authority provided under section 2279b of this title.

(f) Effective date

The Corporation shall not exercise any authority under this section during the 5-year period prior to January 1, 1993.

(Pub. L. 92-181, title V, §5.61, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1616; amended Pub. L. 101-220, §6(b)(4), Dec. 12, 1989, 103 Stat. 1880; Pub. L. 101-624, title XVIII, §1836(b), Nov. 28, 1990, 104 Stat. 3833; Pub. L. 104-105, title II, §217, Feb. 10, 1996, 110 Stat. 179.)

Editorial Notes

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-105, §217(b)(1), substituted “Stand-alone assistance” for “In general” in par. heading.

Subsec. (a)(2). Pub. L. 104-105, §217(b)(2)(A), substituted “Facilitation of mergers or consolidation” for “Enumerated powers” in par. heading.

Subsec. (a)(2)(A). Pub. L. 104-105, §217(b)(2)(B), substituted “In general” for “Facilitation of mergers or consolidation” in subpar. heading.

Subsec. (a)(3)(A). Pub. L. 104-105, §217(a)(2), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: “Assistance shall not be provided to an insured System bank under this subsection if the amount of such assistance exceeds an amount determined by the Corporation to be the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank). This subparagraph shall not apply to the provision of assistance to a bank if the Corporation determines that the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.”

Subsec. (a)(3)(B) to (F). Pub. L. 104-105, §217(a), added subpars. (B) to (E) and redesignated former subpar. (B) as (F).

1990—Subsec. (f). Pub. L. 101-624 substituted “prior to January 1, 1993” for “beginning on the date of the enactment of this part”.

1989—Subsec. (e). Pub. L. 101-220 inserted “and other association making direct loans under the authority provided under section 2279b of this title,” after “production credit association”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-220 effective for insurance premiums due to the Farm Credit System Insurance Corporation under this chapter on or after Jan. 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and effective for the calculation of the initial premium payment required under section 2277a-5(c) of this title, see section 6(c) of Pub. L. 101-220, set out as a note under section 2020 of this title.

§ 2277a-10a. Oversight actions by Corporation

(a) “Institution” defined

In this section, the term “institution” means—

- (1) an insured System bank; and
- (2) a production credit association or other association making loans under section 2279b of this title with a direct loan payable to the funding bank of the association that comprises 20 percent or more of the funding bank’s total loan volume net of nonaccrual loans.

(b) Consultation regarding participation of undercapitalized banks in issuance of insured obligations

The Farm Credit Administration shall consult with the Corporation prior to approving an insured obligation that is to be issued by or on behalf of, or participated in by, any insured System bank that fails to meet the minimum level for any capital requirement established by the Farm Credit Administration for the bank.

(c) Consultation regarding applications for mergers and restructurings

(1) Corporation to receive copy of transaction applications

On receiving an application for a merger or restructuring of an institution, the Farm Credit Administration shall forward a copy of the application to the Corporation.

(2) Consultation required

If the proposed merger or restructuring involves an institution that fails to meet the minimum level for any capital requirement established by the Farm Credit Administration applicable to the institution, the Farm Credit Administration shall allow 30 days within which the Corporation may submit the views and recommendations of the Corporation, including any conditions for approval. In determining whether to approve or disapprove any proposed merger or restructuring, the Farm Credit Administration shall give due consideration to the views and recommendations of the Corporation.

(Pub. L. 92-181, title V, §5.61A, as added Pub. L. 104-105, title II, §218, Feb. 10, 1996, 110 Stat. 180.)

§ 2277a-10b. Authority to regulate golden parachute and indemnification payments

(a) Definitions

In this section:

(1) Golden parachute payment

The term “golden parachute payment”—

(A) means a payment (or any agreement to make a payment) in the nature of compensation for the benefit of any institution-related party under an obligation of any Farm Credit System institution that—

(i) is contingent on the termination of the party's relationship with the institution; and

(ii) is received on or after the date on which—

(I) the institution is insolvent;

(II) a conservator or receiver is appointed for the institution;

(III) the institution has been assigned by the Farm Credit Administration a composite CAMEL rating of 4 or 5 under the Farm Credit Administration Rating System, or an equivalent rating; or

(IV) the Corporation otherwise determines that the institution is in a troubled condition (as defined in regulations issued by the Corporation); and

(B) includes a payment that would be a golden parachute payment but for the fact that the payment was made before the date referred to in subparagraph (A)(ii) if the payment was made in contemplation of the occurrence of an event described in any subclause of subparagraph (A); but

(C) does not include—

(i) a payment made under a retirement plan that is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory benefit plan;

(ii) a payment made under a bona fide supplemental executive retirement plan, deferred compensation plan, or other arrangement that the Corporation determines, by regulation or order, to be permissible; or

(iii) a payment made by reason of the death or disability of an institution-related party.

(2) Indemnification payment

The term “indemnification payment” means a payment (or any agreement to make a payment) by any Farm Credit System institution for the benefit of any person who is or was an institution-related party, to pay or reimburse the person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the Farm Credit Administration that results in a final order under which the person—

(A) is assessed a civil money penalty; or

(B) is removed or prohibited from participating in the conduct of the affairs of the institution.

(3) Institution-related party

The term “institution-related party” means—

(A) a director, officer, employee, or agent for a Farm Credit System institution or any

conservator or receiver of such an institution;

(B) a stockholder (other than another Farm Credit System institution), consultant, joint venture partner, or any other person determined by the Farm Credit Administration to be a participant in the conduct of the affairs of a Farm Credit System institution; and

(C) an independent contractor (including any attorney, appraiser, or accountant) that knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice that caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the Farm Credit System institution.

(4) Liability or legal expense

The term “liability or legal expense” means—

(A) a legal or other professional expense incurred in connection with any claim, proceeding, or action;

(B) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(C) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(5) Payment

The term “payment” means—

(A) a direct or indirect transfer of any funds or any asset; and

(B) any segregation of any funds or assets for the purpose of making, or under an agreement to make, any payment after the date on which the funds or assets are segregated, without regard to whether the obligation to make the payment is contingent on—

(i) the determination, after that date, of the liability for the payment of the amount; or

(ii) the liquidation, after that date, of the amount of the payment.

(b) Prohibition

The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment by a Farm Credit System institution (including any conservator or receiver of the Federal Agricultural Mortgage Corporation) in troubled condition (as defined in regulations issued by the Corporation).

(c) Factors to be taken into account

The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action under subsection (b). The factors may include—

(1) whether there is a reasonable basis to believe that an institution-related party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Farm Credit System institution involved that has had a material effect on the financial condition of the institution;

(2) whether there is a reasonable basis to believe that the institution-related party is substantially responsible for the insolvency of the Farm Credit System institution, the appointment of a conservator or receiver for the institution, or the institution's troubled condition (as defined in regulations prescribed by the Corporation);

(3) whether there is a reasonable basis to believe that the institution-related party has materially violated any applicable law or regulation that has had a material effect on the financial condition of the institution;

(4) whether there is a reasonable basis to believe that the institution-related party has violated or conspired to violate—

(A) section 215, 657, 1006, 1014, or 1344 of title 18; or

(B) section 1341 or 1343 of title 18, affecting a Farm Credit System institution;

(5) whether the institution-related party was in a position of managerial or fiduciary responsibility; and

(6) the length of time that the party was related to the Farm Credit System institution and the degree to which—

(A) the payment reasonably reflects compensation earned over the period of employment; and

(B) the compensation represents a reasonable payment for services rendered.

(d) Certain payments prohibited

No Farm Credit System institution may prepay the salary or any liability or legal expense of any institution-related party if the payment is made—

(1) in contemplation of the insolvency of the institution or after the commission of an act of insolvency; and

(2) with a view to, or with the result of—

(A) preventing the proper application of the assets of the institution to creditors; or

(B) preferring 1 creditor over another creditor.

(e) Rule of construction

Nothing in this section—

(1) prohibits any Farm Credit System institution from purchasing any commercial insurance policy or fidelity bond, so long as the insurance policy or bond does not cover any legal or liability expense of an institution described in subsection (a)(2); or

(2) limits the powers, functions, or responsibilities of the Farm Credit Administration.

(Pub. L. 92-181, title V, §5.61B, as added Pub. L. 104-105, title II, §218, Feb. 10, 1996, 110 Stat. 181.)

§ 2277a-10c. Corporation as conservator or receiver; certain other powers

(a) Definition of institution

In this section, the term “institution” includes any System institution for which the Corporation has been appointed as conservator or receiver.

(b) Certain powers and duties of Corporation as conservator or receiver

In addition to the powers inherent in the express grant of corporate authority under section

2277a-7(9) of this title, and other powers exercised by the Corporation under this part, the Corporation shall have the following express powers to act as a conservator or receiver:

(1) Rulemaking authority of Corporation

The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) General powers

(A) Successor to System institution

The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the System institution, and of any stockholder, member, officer, or director of such System institution with respect to the System institution and the assets of the System institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such System institution.

(B) Operate the System institution

The Corporation may, as conservator or receiver—

(i) take over the assets of and operate the System institution with all the powers of the stockholders or members, the directors, and the officers of the System institution and conduct all business of the System institution;

(ii) collect all obligations and money due the System institution;

(iii) perform all functions of the System institution in the name of the System institution which are consistent with the appointment as conservator or receiver;

(iv) preserve and conserve the assets and property of such System institution; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as conservator or receiver.

(C) Functions of System institution's officers, directors, members, and stockholders

The Corporation may, by regulation or order, provide for the exercise of any function by any stockholder, member, director, or officer of any System institution for which the Corporation has been appointed conservator or receiver.

(D) Powers as conservator

Subject to any Farm Credit Administration approvals required under this chapter, the Corporation may, as conservator, take such action as may be—

(i) necessary to put the System institution in a sound and solvent condition; and

(ii) appropriate to carry on the business of the System institution and preserve and conserve the assets and property of the System institution.

(E) Additional powers as receiver

The Corporation may, as receiver, liquidate the System institution and proceed to realize upon the assets of the System in-

stitution, in such manner as the Corporation determines to be appropriate.

(F) Organization of new System bank

The Corporation may, as receiver with respect to any System bank, organize a bridge System bank under subsection (h).

(G) Merger; transfer of assets and liabilities

(i) In general

Subject to clause (ii), the Corporation may, as conservator or receiver—

(I) merge the System institution with another System institution; and

(II) transfer or sell any asset or liability of the System institution in default without any approval, assignment, or consent with respect to such transfer.

(ii) Approval

No merger or transfer under clause (i) may be made to another System institution (other than a bridge System bank under subsection (h)) without the approval of the Farm Credit Administration.

(H) Payment of valid obligations

The Corporation, as conservator or receiver, shall, to the extent that proceeds are realized from the performance of contracts or the sale of the assets of a System institution, pay all valid obligations of the System institution in accordance with the prescriptions and limitations of this section.

(I) Incidental powers

(i) In general

The Corporation may, as conservator or receiver—

(I) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section and such incidental powers as shall be necessary to carry out such powers; and

(II) take any action authorized by this section, which the Corporation determines is in the best interests of—

(aa) the System institution in receivership or conservatorship;

(bb) System institutions;

(cc) System institution stockholders or investors; or

(dd) the Corporation.

(ii) Termination of rights and claims

(I) In general

Except as provided in subclause (II), notwithstanding any other provision of law, the appointment of the Corporation as receiver for a System institution and the succession of the Corporation, by operation of law, to the rights, titles, powers, and privileges described in subparagraph (A) shall terminate all rights and claims that the stockholders and creditors of the System institution may have, arising as a result of their status as stockholders or creditors, against the assets or charter of the System institution or the Corporation.

(II) Exceptions

Subclause (I) shall not terminate the right to payment, resolution, or other

satisfaction of the claims of stockholders and creditors described in that subclause, as permitted under paragraphs (10) and (11) and subsection (d).

(iii) Charter

Notwithstanding any other provision of law, for purposes of this section, the charter of a System institution shall not be considered to be an asset of the System institution.

(J) Utilization of private sector

In carrying out its responsibilities in the management and disposition of assets from System institutions, as conservator, receiver, or in its corporate capacity, the Corporation may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if the Corporation determines utilization of such services is practicable, efficient, and cost effective.

(3) Authority of receiver to determine claims

(A) In general

The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) Notice requirements

The receiver, in any case involving the liquidation or winding up of the affairs of a closed System institution, shall—

(i) promptly publish a notice to the System institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) Mailing required

The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the System institution's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the System institution's books within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a

System institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the System institution's books;
- (II) in the claim filed by the claimant;
- or
- (III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

- (I) a statement of each reason for the disallowance; and
- (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

- (I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and
- (II) such claim is filed in time to permit payment of such claim.

(D) Authority to disallow claims

(i) In general

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) Payments to less than fully secured creditors

In the case of a claim of a creditor against a System institution which is se-

cured by any property or other asset of such System institution, any receiver appointed for any System institution—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the System institution; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the System institution.

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

- (I) any extension of credit from any Federal Reserve bank or the United States Treasury to any System institution; or
- (II) any security interest in the assets of the System institution securing any such extension of credit.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12) and the determination of claims by a receiver, the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) Provision for judicial determination of claims

(A) In general

Before the end of the 60-day period beginning on the earlier of—

- (i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a System institution for which the Corporation is receiver; or
- (ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the System institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations

If any claimant fails to file suit on such claim (or continue an action commenced be-

fore the appointment of the receiver), before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims; administrative hearing

If any claimant requests review under this paragraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5.

(8) Expedited determination of claims

(A) Establishment required

The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

- (i) allege the existence of legally valid and enforceable or perfected security interests in assets of any System institution for which the Corporation has been appointed receiver; and
- (ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

- (i) determine—
 - (I) whether to allow or disallow such claim; or
 - (II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and
- (ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

- (i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or
- (ii) the date the Corporation denies the claim.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a pre-

viously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(9) Agreement as basis of claim

(A) Requirements

Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 2277a-10(d) of this title shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 2277a-10(d) of this title, any agreement relating to an extension of credit between a Federal Reserve bank or the United States Treasury and any System institution which was executed before such extension of credit to such System institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) Payment of claims

(A) In general

The receiver may, in the receiver's discretion and to the extent funds are available from the assets of the System institution, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this chapter.

(B) Liquidation payments

The receiver may, in the receiver's sole discretion, pay from the assets of the System institution portions of proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to make payments to a claimant whose claim is not proved at the time of any such payment.

(C) Rulemaking authority of Corporation

The Corporation may prescribe such rules, including definitions of terms, as it deems

appropriate to establish a single uniform interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of System institutions following satisfaction by the receiver of the principal amount of all creditor claims.

(11) Priority of expenses and claims

(A) In general

Amounts realized from the liquidation or other resolution of any System institution by any receiver appointed for such System institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

(i) Administrative expenses of the receiver.

(ii) If authorized by the Corporation, wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual—

(I) in an amount that is not more than \$11,725 for each individual (as indexed for inflation, by regulation of the Corporation); and

(II) that is earned 180 days or fewer before the date of appointment of the Corporation as receiver.

(iii) In the case of the resolution of a System bank, all claims of holders of consolidated and System-wide bonds and all claims of the other System banks arising from the payments of the System banks pursuant to—

(I) section 2155 of this title on consolidated and System-wide bonds issued under subsection (c) or (d) of section 2153 of this title; or

(II) an agreement, in writing and approved by the Farm Credit Administration, among the System banks to reallocate the payments.

(iv) In the case of the resolution of a production credit association or other association making direct loans under section 2279b of this title, all claims of a System bank based on the financing agreement between the association and the System bank—

(I) including interest accrued before and after the appointment of the receiver; and

(II) not including any setoff for stock or other equity of that System bank owned by the association, on that condition that, prior to making that setoff, that System bank shall obtain the approval of the Farm Credit Administration Board for the retirement of that stock or equity.

(v) Any general or senior liability of the System institution (which is not a liability described in clause (vi) or (vii)).

(vi) Any obligation subordinated to general creditors (which is not an obligation described in clause (vii)).

(vii) Any obligation to stockholders or members arising as a result of their status as stockholders or members.

(B) Payment of claims

(i) In general

(I) Payment

All claims of each priority described in clauses (i) through (vii) of subparagraph (A) shall be paid in full, or provisions shall be made for that payment, prior to the payment of any claim of a lesser priority.

(II) Insufficient funds

If there are insufficient funds to pay in full all claims in any priority described in clauses (i) through (vii) of subparagraph (A), distribution on that priority of claims shall be made on a pro rata basis.

(ii) Distribution of remaining assets

Following the payment of all claims in accordance with subparagraph (A), the receiver shall distribute the remainder of the assets of the System institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment under the bylaws of the System institution.

(iii) Eligible borrower stock

Notwithstanding subparagraph (C) or any other provision of this section, eligible borrower stock shall be retired in accordance with section 2162 of this title.

(C) Effect of State law

(i) In general

The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

(ii) Procedure for determination of inconsistency

Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

(iii) Judicial review

The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5.

(D) Accounting report

Any distribution by the Corporation in connection with any claim described in subparagraph (A)(vii) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or receiver for a System institution, the con-

servator or receiver may request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any receiver,

in any judicial action or proceeding to which such System institution is or becomes a party.

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties

(A) Prior final adjudication

The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) Rights and remedies of conservator or receiver

In the event of any appealable judgment, the Corporation as conservator or receiver shall—

- (i) have all the rights and remedies available to the System institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and
- (ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court on—

- (i) assets in the possession of the receiver; or
- (ii) the charter of a System institution for which the Corporation has been appointed receiver.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

- (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any System institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or
- (ii) any claim relating to any act or omission of such System institution or the Corporation as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as receiver in connection with any sale or disposition of assets of any System institution for which the Corporation is acting as receiver, the Corporation shall, to the maximum extent practicable, conduct its operations in a manner which—

- (i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) mitigates the potential for serious adverse effects to the rest of the System.

(14) Statute of limitations for actions brought by conservator or receiver

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(C) Revival of expired state causes of action

(i) In general

In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) Claims described

A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the System institution.

(15) Accounting and recordkeeping requirements

(A) In general

The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of System institutions in default.

(B) Annual accounting or report

With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Farm Credit Administration Board.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any stockholder of the System institution for which the Corporation was appointed conservator or receiver or any other member of the public.

(D) Recordkeeping requirement**(i) In general**

Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of a System institution, the Corporation may destroy any records of such System institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) Old records

Notwithstanding clause (i), the Corporation may destroy records of a System institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such System institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) Fraudulent transfers**(A) In general**

The Corporation, as conservator or receiver for any System institution, may avoid a transfer of any interest of a System institution-affiliated party, or any person who the Corporation determines is a debtor of the System institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the System institution, the Farm Credit Administration, or the Corporation.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the System institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- (i) the initial transferee of such transfer or the System institution-affiliated party or person for whose benefit such transfer was made; or
- (ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The Corporation may not recover under subparagraph (B) from—

- (i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- (ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights under this paragraph of the Corporation shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(17) Attachment of assets and other injunctive relief

Subject to paragraph (18), any court of competent jurisdiction may, at the request of the Corporation (in the Corporation's capacity as conservator or receiver for any System institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 2277a-10 of this title), issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(18) Standards**(A) Showing**

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (17) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (17) may be requested under the laws of such State.

(19) Treatment of claims arising from breach of contracts executed by the receiver or conservator

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for a System institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including terminating, breaching, canceling, or otherwise discontinuing such agreement.

(c) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for a System institution may disaffirm or repudiate any contract or lease—

(A) to which such System institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the System institution's affairs.

(2) Timing of repudiation

The Corporation as conservator or receiver for any System institution shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (j), except as otherwise specifically provided in this section.

(4) Leases under which the System institution is the lessee

(A) In general

If the conservator or receiver disaffirms or repudiates a lease under which the System

institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease; and

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (j).

(5) Leases under which the System institution is the lessor

(A) In general

If the conservator or receiver repudiates an unexpired written lease of real property of the System institution under which the System institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the System institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or receiver repudiates any contract that meets the requirements of

paragraphs (1) through (4) of section 2277a-10(d) of this title for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

- (i) treat the contract as terminated by such repudiation; or
- (ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

- (i) the purchaser—
 - (I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and
 - (II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the System institution under the contract; and
- (ii) the conservator or receiver shall—
 - (I) not be liable to the purchaser for any damages arising after that date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);
 - (II) deliver title to the purchaser in accordance with the contract; and
 - (III) have no obligation under the contract, other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the Corporation, acting as conservator or receiver, shall have no further liability under the applicable contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any System institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

- (i) a claim to be paid in accordance with subsections (b) and (d); and

- (ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

- (i) the other party shall be paid under the terms of the contract for the services performed; and
- (ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver, to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Definitions

In this paragraph:

(i) Commodity contract

The term “commodity contract” means—

- (I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;
- (II) with respect to a foreign futures commission merchant, a foreign future;
- (III) with respect to a leverage transaction merchant, a leverage transaction;
- (IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;
- (V) with respect to a commodity options dealer, a commodity option;
- (VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;
- (VII) any combination of the agreements or transactions referred to in this clause;
- (VIII) any option to enter into any agreement or transaction referred to in this clause;
- (IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement pro-

vides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(ii) Forward contract

The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a repurchase agreement), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I) through (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(iii) Person

The term “person”—

(I) has the meaning given the term in section 1 of title 1; and

(II) includes any governmental entity.

(iv) Qualified financial contract

The term “qualified financial contract” means any securities contract, commodity

contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(v) Repurchase agreement

(I) In general

The term “repurchase agreement” (including with respect to a reverse repurchase agreement)—

(aa) means—

(AA) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in section 78c(a) of title 15), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(BB) any combination of agreements or transactions referred to in subitems (AA) and (CC);

(CC) any option to enter into any agreement or transaction referred to in subitem (AA) or (BB);

(DD) a master agreement that provides for an agreement or transaction referred to in subitem (AA), (BB), or (CC), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this item, except that the master agreement shall be considered to be a repurchase agreement under this item only with respect to each agreement or transaction under the master agreement that is referred to in subitem (AA), (BB), or (CC); and

(EE) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subitems (AA) through (DD), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subitem; and

(bb) does not include any repurchase obligation under a participation in a commercial mortgage,¹ loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

(II) Related definition

For purposes of subclause (I)(aa), the term “qualified foreign government security” means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) Securities contract

The term “securities contract”—

(I) means—

(aa) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not the repurchase or reverse repurchase transaction is a repurchase agreement);

(bb) any option entered into on a national securities exchange relating to foreign currencies;

(cc) the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not the settlement is in connection with any agreement or transaction referred to in any of items (aa), (bb), and (dd) through (kk));

(dd) any margin loan;

(ee) any extension of credit for the clearance or settlement of securities transactions;

(ff) any loan transaction coupled with a securities collar transaction, any prepaid securities forward trans-

action, or any total return swap transaction coupled with a securities sale transaction;

(gg) any other agreement or transaction that is similar to any agreement or transaction referred to in this subclause;

(hh) any combination of the agreements or transactions referred to in this subclause;

(ii) any option to enter into any agreement or transaction referred to in this subclause;

(jj) a master agreement that provides for an agreement or transaction referred to in any of items (aa) through (ii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subclause, except that the master agreement shall be considered to be a securities contract under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in item (aa), (bb), (cc), (dd), (ee), (ff), (gg), (hh), or (ii); and

(kk) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subclause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this subclause; and

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term.

(vii) Swap agreement

The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, that is—

(aa) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(bb) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange precious metals or other commodity agreement;

(cc) a currency swap, option, future, or forward agreement;

(dd) an equity index or equity swap, option, future, or forward agreement;

(ee) a debt index or debt swap, option, future, or forward agreement;

(ff) a total return, credit spread or credit swap, option, future, or forward agreement;

(gg) a commodity index or commodity swap, option, future, or forward agreement;

¹ So in original. The comma probably should not appear.

- (hh) a weather swap, option, future, or forward agreement;
- (ii) an emissions swap, option, future, or forward agreement; or
- (jj) an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(viii) Transfer

The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of a System institution.

(ix) Treatment of master agreement as 1 agreement

For purposes of this subparagraph—

(I) any master agreement for any contract or agreement described in this sub-

paragraph (or any master agreement for such a master agreement or agreements), together with all supplements to the master agreement, shall be treated as a single agreement and a single qualified financial contact; and

(II) if a master agreement contains provisions relating to agreements or transactions that are not qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(B) Rights of parties to contracts

Subject to paragraphs (9) and (10), and notwithstanding any other provision of this chapter (other than subsection (b)(9) and section 2277a-10(d) of this title) or any other Federal or State law, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a System institution which arises upon the appointment of the Corporation as receiver for such System institution at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under, or in connection with, 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(C) Applicability of other provisions

Subsection (b)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the System institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (B)(i) with such System institution.

(D) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of a System institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with a System institution.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a System institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such System institution, the creditors of such Sys-

tem institution, or any conservator or receiver appointed for such System institution.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this chapter (other than subparagraph (G), paragraph (10), subsection (b)(9), and section 2277a-10(d) of this title) or any other Federal or State law, no person shall be stayed or prohibited from exercising—

- (i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a System institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;
- (ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); and
- (iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) or to disaffirm or repudiate any such contract in accordance with paragraph (1).

(G) Walkaway clauses not effective

(i) Definition of walkaway clause

In this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist—

- (I) solely because of—
 - (aa) the status of the party as a non-defaulting party in connection with the insolvency of a System institution that is a party to the contract; or
 - (bb) the appointment of, or the exercise of rights or powers by, the Corporation as a conservator or receiver of the System institution; and
- (II) not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under—
 - (aa) the contract;
 - (bb) any other contract between those parties; or
 - (cc) applicable law.

(ii) Treatment

Notwithstanding the provisions of subparagraphs (B) and (E), no walkaway clause shall be enforceable in a qualified

financial contract of a System institution in default.

(iii) Limited suspension of certain obligations

In the case of a qualified financial contract referred to in clause (ii), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

- (I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (B); or
- (II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(H) Recordkeeping requirements

The Corporation, in consultation with the Farm Credit Administration, may prescribe regulations requiring more detailed recordkeeping by any System institution with respect to qualified financial contracts (including market valuations), only if such System institution is subject to subclause (I), (III), or (IV) of section 2277a-10b(a)(1)(A)(ii) of this title.

(9) Transfer of qualified financial contracts

(A) Definitions

In this paragraph:

(i) Clearing organization

The term “clearing organization” has the meaning given the term in section 4402 of this title.

(ii) Financial institution

The term “financial institution” means a System institution, a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution.

(B) Requirement

In making any transfer of assets or liabilities of a System institution in default which includes any qualified financial contract, the conservator or receiver for such System institution shall either—

- (i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or that is otherwise the subject of a bankruptcy or insolvency proceeding—
 - (I) all qualified financial contracts between any person or any affiliate of such person and the System institution in default;
 - (II) all claims of such person or any affiliate of such person against such System institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such System institution);
 - (III) all claims of such System institution against such person or any affiliate

of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(C) Transfer to foreign bank, foreign financial institution, or branch or agency of a foreign bank or financial institution

In transferring any qualified financial contracts and related claims and property under subparagraph (B)(i), the conservator or receiver for the System institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(D) Transfer of contracts subject to the rules of a clearing organization

In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (B)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(10) Notification of transfer

(A) Definition of business day

In this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(B) Notification

If—

(i) the conservator or receiver for a System institution in default makes any transfer of the assets and liabilities of such System institution; and

(ii) the transfer includes any qualified financial contract, the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(C) Certain rights not enforceable

(i) Receivership

A person who is a party to a qualified financial contract with a System institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(B) of this subsection, solely by reason of or incidental to the appointment of a receiver for the System institution (or the insolvency or financial condition of the System institution for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(B).

(ii) Conservatorship

A person who is a party to a qualified financial contract with a System institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection, solely by reason of or incidental to the appointment of a conservator for the System institution (or the insolvency or financial condition of the System institution for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the Corporation as receiver or conservator of a System institution shall be deemed to have notified a person who is a party to a qualified financial contract with such System institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (B).

(D) Treatment of bridge System institutions

The following System institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge System bank.

(ii) A System institution organized by the Corporation or the Farm Credit Administration, for which a conservator is appointed either—

(I) immediately upon the organization of the System institution; or

(II) at the time of a purchase and assumption transaction between the System institution and the Corporation as receiver for a System institution in default.

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a System institution is a party, the conservator or receiver for such System institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

- (i) any person or any affiliate of such person; and
- (ii) the System institution in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any System institution except where such an interest is taken in contemplation of the System institution's insolvency or with the intent to hinder, delay, or defraud the System institution or the creditors of such System institution.

(13) Authority to enforce contracts

(A) In general

The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a System institution bond, entered into by the System institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or institution bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the System institution is a party, or to obtain possession of or exercise control over any property of the System institution or affect any contractual rights of the System institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) Certain exceptions

No provision of this subparagraph shall apply to a director or officer liability insurance contract or an institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(14) Exception for Federal Reserve and the United States Treasury

No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal Reserve bank or the United States Treasury to any System institution; or

(B) any security interest in the assets of the System institution securing any such extension of credit.

(15) Savings clause

The meanings of terms used in this subsection—

(A) are applicable for purposes of this subsection only; and

(B) shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other law, regulation, or rule, including—

(i) the Gramm-Leach-Bliley Act (12 U.S.C. 1811 note; Public Law 106-102);

(ii) the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.);

(iii) the securities laws (as that term is defined in section 78c(a) of title 15); and

(iv) the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(d) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to a System institution in default or in danger of default, including transactions authorized under subsection (h) and section 2277a-10(a) of this title, this subsection shall govern the rights of the creditors of such System institution.

(2) Maximum liability

The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the System institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such System institution without exercising the Corporation's authority under subsection (h) or section 2277a-10(a) of this title.

(3) Additional payments authorized

(A) In general

The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) Manner of payment

The Corporation may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open System institution to induce such System institution to accept liability for such claims.

(e) Limitation on court action

Except as provided in this section, no court may take any action, except at the written request of the Board of Directors, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(f) Liability of Directors and Officers**(1) In general**

A director or officer of a System institution may be held personally liable for monetary damages in any civil action—

(A) brought by, on behalf of, or at the request or direction of the Corporation;

(B) prosecuted wholly or partially for the benefit of the Corporation—

(i) acting as conservator or receiver of that System institution;

(ii) acting based on a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by that receiver or conservator; or

(iii) acting based on a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a System institution or an affiliate of a System institution in connection with assistance provided under section 2277a-10(a) of this title; and

(C) for, as determined under the applicable State law—

(i) gross negligence; or

(ii) any similar conduct, including conduct that demonstrates a greater disregard of a duty of care than gross negligence, such as intentional tortious conduct.

(2) Effect

Nothing in paragraph (1) impairs or affects any right of the Corporation under any other applicable law.

(g) Damages

In any proceeding related to any claim against a System institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a System institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any System institution's assets shall include principal losses and appropriate interest.

(h) Bridge Farm Credit System banks**(1) Organization****(A) Purpose****(i) In general**

When 1 or more System banks are in default, or when the Corporation anticipates that 1 or more System banks may become in default, the Corporation may, in its discretion, organize, and the Farm Credit Ad-

ministration may, in its discretion, charter, 1 or more System banks, with the powers and attributes of System banks, subject to the provisions of this subsection, to be referred to as "bridge System banks".

(ii) Intent of Congress

It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any System bank in default with respect to which a bridge System bank is chartered, the Corporation should—

(I) continue to honor commitments made by the System bank in default to creditworthy customers; and

(II) not interrupt or terminate adequately secured loans which are transferred under this subsection and are being repaid by the debtor in accordance with the terms of the loan instrument.

(B) Authorities

Once chartered by the Farm Credit Administration, the bridge System bank may—

(i) assume such liabilities of the System bank or banks in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets of the System bank or banks in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this chapter.

(C) Articles of association

The articles of association and organization certificate of a bridge System bank as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) Interim directors

A bridge System bank shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(2) Chartering**(A) Conditions**

The Farm Credit Administration may charter a bridge System bank only if the Board of Directors determines that—

(i) the amount which is reasonably necessary to operate such bridge System bank will not exceed the amount which is reasonably necessary to save the cost of liquidating 1 or more System banks in default or in danger of default with respect to which the bridge System bank is chartered;

(ii) the continued operation of such System bank or banks in default or in danger of default with respect to which the bridge System bank is chartered is essential to provide adequate farm credit services in the 1 or more communities where each such System bank in default or in danger of default is or was providing those farm credit services; or

(iii) the continued operation of such System bank or banks in default or in danger of default with respect to which the bridge System bank is chartered is in the best interest of the Farm Credit System or the public.

(B) Bridge System bank treated as being in default for certain purposes

A bridge System bank shall be treated as being in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(C) Management

A bridge System bank, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation, in consultation with the Farm Credit Administration.

(D) Bylaws

The board of directors of a bridge System bank shall adopt such bylaws as may be approved by the Corporation.

(3) Transfer of assets and liabilities

(A) Transfer upon grant of charter

Upon the granting of a charter to a bridge System bank pursuant to this subsection, the Corporation, as receiver, may transfer any assets and liabilities of the System bank to the bridge System bank in accordance with paragraph (1).

(B) Subsequent transfers

At any time after a charter is granted to a bridge System bank, the Corporation, as receiver, may transfer any assets and liabilities of such System bank in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(C) Effective without approval

The transfer of any assets or liabilities of a System bank in default or danger of default transferred to a bridge System bank shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(4) Powers of bridge System banks

Each bridge System bank chartered under this subsection shall, to the extent described in the charter of the System bank in default with respect to which the bridge System bank is chartered, have all corporate powers of, and be subject to the same provisions of law as, any System bank, except that—

(A) the Corporation may—

(i) remove the interim directors and directors of a bridge System bank;

(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge System bank; and

(iii) waive any requirement established under Federal or State law which would otherwise be applicable with respect to directors of a bridge System bank, on the

condition that the waiver of any requirement established by the Farm Credit Administration shall require the concurrence of the Farm Credit Administration;

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge System bank on such terms as the Corporation determines to be appropriate;

(C) no requirement under any provision of law relating to the capital of a System institution shall apply with respect to a bridge System bank;

(D) the Farm Credit Administration Board may establish a limitation on the extent to which any person may become indebted to a bridge System bank without regard to the amount of the bridge System bank's capital or surplus;

(E)(i) the board of directors of a bridge System bank shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and

(ii) the board of directors of a bridge System bank may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) the Farm Credit Administration may waive any requirement for a fidelity bond with respect to a bridge System bank at the request of the Corporation;

(G) any judicial action to which a bridge System bank becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a System bank in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge System bank;

(H) no agreement which tends to diminish or defeat the right, title or interest of a bridge System bank in any asset of a System bank in default acquired by it shall be valid against the bridge System bank unless such agreement—

(i) is in writing;

(ii) was executed by such System bank in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such System bank in default;

(iii) was approved by the board of directors of such System bank in default or its loan committee, which approval shall be reflected in the minutes of said board or committee; and

(iv) has been, continuously from the time of its execution, an official record of such System bank in default;

(I) notwithstanding subsection² 2277a-10(d)(2) of this title, any agreement relating to an extension of credit between a

² So in original. Probably should be "section".

System bank, Federal Reserve bank, or the United States Treasury and any System institution which was executed before the extension of credit by such lender to such System institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (H); and

(J) except with the prior approval of the Corporation and the concurrence of the Farm Credit Administration, a bridge System bank may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of substantially all of the assets or liabilities of the bridge System bank, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) Capital

(A) No capital required

The Corporation shall not be required to—

(i) issue any capital stock on behalf of a bridge System bank chartered under this subsection; or

(ii) purchase any capital stock of a bridge System bank, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge System bank in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) Operating funds in lieu of capital

Upon the organization of a bridge System bank, and thereafter, as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge System bank, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge System bank in lieu of capital.

(C) Authority to issue capital stock

Whenever the Farm Credit Administration Board determines it is advisable to do so, the Corporation shall cause capital stock of a bridge System bank to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(6) Employee status

Representatives for purposes of paragraph (1)(C), interim directors, directors, officers, employees, or agents of a bridge System bank are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation, the Farm Credit Administration, or any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(C), interim director, director, officer, employee, or agent of a bridge System bank shall not—

(A) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of any provision of law; or

(B) receive any salary or benefits for service in any such capacity with respect to a bridge System bank in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) Assistance authorized

The Corporation may, in its discretion, provide assistance under section 2277a-10(a) of this title to facilitate any merger or consolidation of a bridge System bank in the same manner and to the same extent as such assistance may be provided to a qualifying insured System bank (as defined in section 2277a-10(a)(2)(B) of this title) or to facilitate a bridge System bank's acquisition of any assets or the assumption of any liabilities of a System bank in default or in danger of default.

(8) Duration of bridge System banks

Subject to paragraphs (10) and (11), the status of a bridge System bank as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Farm Credit Administration Board may, in its discretion, extend the status of the bridge System bank as such for 3 additional 1-year periods.

(9) Termination of bridge System banks status

The status of any bridge System bank as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge System bank with a System institution that is not a bridge System bank, on the condition that the merger or consolidation shall be subject to the approval of the Farm Credit Administration;

(B) at the election of the Corporation and with the approval of the Farm Credit Administration, the sale of a majority or all of the capital stock of the bridge System bank to a System institution or another bridge System bank;

(C) at the election of the Corporation, and with the approval of the Farm Credit Administration, either the assumption of all or substantially all of the liabilities of the bridge System bank, or the acquisition of all or substantially all of the assets of the bridge System bank, by a System institution that is not a bridge System bank or other entity as permitted under applicable law; and

(D) the expiration of the period provided in paragraph (8), or the earlier dissolution of the bridge System bank as provided in paragraph (11).

(10) Effect of termination events

(A) Merger or consolidation

A bridge System bank that participates in a merger or consolidation as provided in paragraph (9)(A) shall be for all purposes a System institution, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) Charter conversion

Following the sale of a majority or all of the capital stock of the bridge System bank

as provided in paragraph (9)(B), the Farm Credit Administration Board may amend the charter of the bridge System bank to reflect the termination of the status of the bridge System bank as such, whereupon the System bank shall remain a System bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) Assumption of liabilities and sale of assets

Following the assumption of all or substantially all of the liabilities of the bridge System bank, or the sale of all or substantially all of the assets of the bridge System bank, as provided in paragraph (9)(C), at the election of the Corporation, the bridge System bank may retain its status as such for the period provided in paragraph (8).

(D) Amendments to charter

Following the consummation of a transaction described in subparagraph (A), (B), or (C) of paragraph (9), the charter of the resulting System institution shall be amended by the Farm Credit Administration to reflect the termination of bridge System bank status, if appropriate.

(11) Dissolution of bridge System bank

(A) In general

Notwithstanding any other provision of State or Federal law, if the bridge System bank's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), or (C) of paragraph (9)—

(i) the Corporation, after consultation with the Farm Credit Administration, may, in its discretion, dissolve a bridge System bank in accordance with this paragraph at any time; and

(ii) the Corporation, after consultation with the Farm Credit Administration, shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge System bank was chartered, or any extension thereof, as provided in paragraph (8).

(B) Procedures

The Farm Credit Administration Board shall appoint the Corporation as receiver for a bridge System bank upon determining to dissolve the bridge System bank. The Corporation as such receiver shall wind up the affairs of the bridge System bank in conformity with the provisions of law relating to the liquidation of closed System banks. With respect to any such bridge System bank, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured System bank and, notwithstanding any other provision of law in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(12) Multiple bridge System banks

The Corporation may, in the Corporation's discretion, organize, and the Farm Credit Administration may, in its discretion, charter, 2 or more bridge System banks under this subsection to assume any liabilities and purchase any assets of a single System institution in default.

(i) Certain sales of assets prohibited

(1) Persons who engaged in improper conduct with, or caused losses to, System institutions

The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed System institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed \$1,000,000, to such failed System institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any System institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed System institution or of any affiliate of such System institution, in a material way in transactions that resulted in a substantial loss to such failed System institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed System institution pursuant to any final enforcement action by the Farm Credit Administration;

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed System institution; or

(E) any person who is in default on any loan or other extension of credit from such failed System institution which, if not paid, will cause substantial loss to the System institution or the Corporation.

(2) Defaulted debtors

Except as provided in paragraph (3), any person who is in default on any loan or other extension of credit from the System institution, which, if not paid, will cause substantial loss to the System institution or the Corporation, may not purchase any asset from the conservator or receiver.

(3) Settlement of claims

Paragraph (1) shall not apply to the sale or transfer by the Corporation of any asset of any System institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any System institution, or the Corporation.

(4) Definition of default

For purposes of this subsection, the term “default” means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(j) Expedited procedures for certain claims

(1) Time for filing notice of appeal

The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a System institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a System institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) Scheduling

A court of the United States shall expedite the consideration of any case brought by the Corporation against a System institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a System institution. As far as practicable the court shall give such case priority on its docket.

(3) Judicial discretion

The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) Bond not required; agents; fee

The Corporation as conservator or receiver of a System institution shall not be required to furnish bond and may appoint an agent or agents to assist in its duties as such conservator or receiver. All fees, compensation, and expenses of liquidation and administration shall be fixed by the Corporation and may be paid by it out of funds coming into its possession as such conservator or receiver.

(l) Consultation regarding conservatorships and receiverships

To the extent practicable—

(1) the Farm Credit Administration shall consult with the Corporation prior to taking a preresolution action concerning a System institution that may result in a conservatorship or receivership; and

(2) the Corporation, acting in the capacity of the Corporation as a conservator or receiver, shall consult with the Farm Credit Administration prior to taking any significant action impacting System institutions or service to System borrowers.

(m) Applicability

This section shall become applicable with respect to the power of the Corporation to act as

a conservator or receiver on the date on which the Farm Credit Administration appoints the Corporation as a conservator or receiver under section 2183 or 2279cc of this title.

(Pub. L. 92-181, title V, §5.61C, as added Pub. L. 115-334, title V, §5412, Dec. 20, 2018, 132 Stat. 4686.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(17), (18), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Gramm-Leach-Bliley Act, referred to in subsec. (c)(15)(B)(i), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (c)(15)(B)(ii), is title IV of H.R. 5660, as enacted by Pub. L. 106-554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A-457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (c)(15)(B)(iv), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

§ 2277a-11. Investment of funds

Money of the Corporation not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(Pub. L. 92-181, title V, §5.62, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1618.)

§ 2277a-12. Exemption from taxation

Notwithstanding any other provision of law, the Corporation, including its franchise, and its capital, reserves, surplus, and income, shall be exempt from all taxation imposed by the United States, or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, county, municipal, and local taxation to the same extent according to its value as other real property is taxed.

(Pub. L. 92-181, title V, §5.63, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1618.)

§ 2277a-13. Omitted

Editorial Notes

CODIFICATION

Section, Pub. L. 92-181, title V, §5.64, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1619, which required the Farm Credit System Insurance Corporation to submit an annual report to Congress on the operations of the Corporation, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 167 of House Document No. 103-7.

§ 2277a-14. Prohibitions**(a) Corporate name****(1) Use of corporate name**

It shall be unlawful for any person or entity to use the words “Farm Credit System Insurance Corporation” or any combination of such words that would have the effect of leading the public to believe that there is any connection between such person or entity and the Corporation, by virtue of the name under which such person or entity does business.

(2) False representation**(A) By outside person or entities**

It shall be unlawful for any person or entity to falsely represent by any device, that the notes, bonds, debentures, or other obligations of the person or entity are insured or in any way guaranteed by the Corporation.

(B) System banks

It shall be unlawful for any insured System bank or person that markets insured obligations to falsely represent the extent to which or the manner in which such obligations are insured by the Corporation.

(3) Penalty

Any person or entity that willfully violates any provision of this subsection shall be fined not more than \$1,000, imprisoned for not more than 1 year, or both.

(b) Payments or distributions while in default**(1) In general**

It shall be unlawful for any insured System bank to pay any dividends on bank stock or participation certificates or interest on the capital notes or debentures of such bank (if such interest is required to be paid only out of net profits) or distribute any of the capital assets of such bank while the bank remains in default in the payment of any premium due to the Corporation.

(2) Liability of directors

Each director or officer of any insured System bank who willfully participates in the declaration or payment of any dividend or interest or in any distribution in violation of this subsection shall be fined not more than \$1,000, imprisoned not more than 1 year, or both.

(3) Applicability

This subsection shall not apply to any default that is due to a dispute between the insured System bank and the Corporation over the amount of such premium if such bank deposits security satisfactory to the Corporation for payment on final determination of the issue.

(c) Failure to file statement or pay premium**(1) In general**

Any insured System bank that willfully fails or refuses to file any certified statement or pay any premium required under this part shall be subject to a penalty of not more than \$100 for each day that such violations continue, which penalty the Corporation may recover for its use.

(2) Applicability

This subsection shall not apply to conduct with respect to any default that is due to a dispute between the insured System bank and the Corporation over the amount of such premium if such bank deposits security satisfactory to the Corporation for payment on final determination of the issue.

(d) Employment of persons convicted of criminal offenses**(1) In general**

Except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or employee of any System institution.

(2) Penalty

For each willful violation of paragraph (1), the institution involved shall be subject to a penalty of not more than \$100 for each day during which the violation continues, which the Corporation may recover for its use.

(e) Prohibition on uses of funds related to Federal Agricultural Mortgage Corporation

No funds from administrative accounts or from the Farm Credit System Insurance Fund may be used by the Corporation to provide assistance to the Federal Agricultural Mortgage Corporation or to support any activities related to the Federal Agricultural Mortgage Corporation.

(Pub. L. 92-181, title V, §5.65, as added Pub. L. 100-233, title III, §302, Jan. 6, 1988, 101 Stat. 1619; amended Pub. L. 101-624, title XVIII, §1837, Nov. 28, 1990, 104 Stat. 3834; Pub. L. 102-237, title V, §502(k), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 115-334, title V, §5409, Dec. 20, 2018, 132 Stat. 4678.)

Editorial Notes**AMENDMENTS**

2018—Subsec. (e). Pub. L. 115-334 added subsec. (e).

1991—Subsec. (d)(1). Pub. L. 102-237 struck out “insured” before “System”.

1990—Subsec. (d)(1). Pub. L. 101-624, §1837(1), substituted “insured System institution” for “insured System bank”.

Subsec. (d)(2). Pub. L. 101-624, §1837(2), substituted “institution” for “bank”.

SUBCHAPTER VI—ASSISTANCE TO FARM CREDIT SYSTEM**§§ 2278a to 2278b-11. Repealed. Pub. L. 115-334, title V, § 5411(39), Dec. 20, 2018, 132 Stat. 4683**

Sections 2278a to 2278a-13 comprised part A of this subchapter “Assistance Board”.

Section 2278a, Pub. L. 92-181, title VI, §6.0, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1585, established the Farm Credit System Assistance Board.

Section 2278a-1, Pub. L. 92-181, title VI, §6.1, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1585, set out purposes of the Board.

Section 2278a-2, Pub. L. 92-181, title VI, §6.2, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1586; amended Pub. L. 102-237, title V, §502(l), Dec. 13, 1991, 105 Stat. 1869, provided for Board of Directors of the Assistance Board.