

(C) as (D).

Subsec. (l)(1)(D)(ii). Pub. L. 111-203, §606(a)(4), substituted "subparagraphs (A), (B), and (C)" for "subparagraphs (A) and (B)".

2006—Subsec. (h)(1), (2). Pub. L. 109-351, §727(b), substituted "(G), or (H) of section 1841(c)(2)" for "(G), (H), (I), or (J) of section 1841(c)(2)".

Subsec. (n)(5)(B). Pub. L. 109-351, §611, substituted "subparagraph (H) or (I) of subsection (k)(4)" for "subsection (k)(4)(I)" in introductory provisions.

1999—Subsec. (c)(8). Pub. L. 106-102, §102(a), amended par. (8) generally, substituting present provisions for provisions which exempted from prohibitions of this section shares of any bank holding company the activities of which were determined to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, which further provided that for purposes of this subsection it was not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except in certain circumstances, which further provided factors to consider in determining whether a particular activity is a proper incident to banking or managing or controlling banks, and which further provided notice and other procedural requirements in making such determinations.

Subsec. (f)(2). Pub. L. 106-102, §107(d)(1), added introductory provisions and struck out former introductory provisions which read as follows: "Paragraph (1) shall cease to apply to any company described in such paragraph if—".

Subsec. (f)(2)(A)(ii)(XI). Pub. L. 106-102, §107(d)(2)(A)–(C), added subcl. (XI).

Subsec. (f)(2)(B), (C). Pub. L. 106-102, §107(d)(2)(D), (3), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: "any bank subsidiary of such company fails to comply with the restrictions contained in paragraph (3)(B)."

Subsec. (f)(3). Pub. L. 106-102, §107(a), (b), added par. (3) and struck out heading and text of former par. (3) which related to limitation on banks controlled by paragraph (1) companies.

Subsec. (f)(4). Pub. L. 106-102, §107(e), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: "If any company described in paragraph (1) loses the exemption provided under such paragraph by operation of paragraph (2), such company shall divest control of each bank it controls within 180 days after such company becomes a bank holding company due to the loss of such exemption."

Subsec. (f)(14). Pub. L. 106-102, §107(f), added par. (14).

Subsec. (j)(1)(A), (E). Pub. L. 106-102, §103(c)(2)(A), inserted "or in any complementary activity under subsection (k)(1)(B)" after "subsection (c)(8) or (a)(2)".

Subsec. (j)(3). Pub. L. 106-102, §103(c)(2)(B), inserted ", other than any complementary activity under subsection (k)(1)(B)," after "to engage in any activity" and "or a company engaged in any complementary activity under subsection (k)(1)(B)" after "insured depository institution".

Subsecs. (k) to (o). Pub. L. 106-102, §103(a), added subsecs. (k) to (o).

1996—Subsec. (c)(2). Pub. L. 104-208, §2215, struck out "for not more than one year at a time" before "if, in its judgment," and substituted "and, in the case of a bank holding company which has not disposed of such shares within 5 years after the date on which such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the judgment of the Board, such extension would not be detrimental to the public interest and, either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period, or the disposal of such shares during such 5-year period would have been detrimental to the company, except that the aggregate duration of such extensions shall not extend beyond 10 years" for "but no such extensions shall extend beyond a date five years".

Subsec. (c)(8). Pub. L. 104-208, §2612, substituted "(and opportunity for hearing in the case of an acquisition of a savings association)" for "and opportunity for hearing".

Subsec. (f)(3)(B)(iv). Pub. L. 104-208, §2304(a), struck out cl. (iv) which read as follows: "increase its assets at an annual rate of more than 7 percent during any 12-month period beginning after the end of the 1-year period beginning on August 10, 1987."

Subsec. (i)(4) to (7). Pub. L. 104-208, §2203(d), added pars. (4) to (7).

Subsec. (j)(1)(A). Pub. L. 104-208, §2208(a)(1), substituted "Except as provided in paragraph (3), no" for "No".

Subsec. (j)(3) to (7). Pub. L. 104-208, §2208(a)(2), added pars. (3) to (7).

1994—Subsec. (c). Pub. L. 103-325, §346(2), struck out before last sentence "In the event of the failure of the Board to act on any application for an order under paragraph (8) of this subsection within the ninety-one-day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted."

Subsec. (j). Pub. L. 103-325, §346(1), added subsec. (j).

1992—Subsec. (i)(3). Pub. L. 102-550, §1606(h)(1), amended directory language of Pub. L. 102-242, §461. See 1991 Amendment note below.

1991—Subsec. (i)(3). Pub. L. 102-242, §461, as amended by Pub. L. 102-550, §1606(h)(1), added par. (3).

1989—Subsec. (f)(2)(A)(i). Pub. L. 101-73, §604(b)(2), inserted reference to par. (12).

Subsec. (f)(2)(A)(ii). Pub. L. 101-73, §603(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "acquires control of more than 5 percent of the shares or assets of an additional bank or an insured institution other than—

"(I) shares acquired in a bona fide fiduciary capacity;

"(II) shares held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

"(III) shares held in an account solely for trading purposes;

"(IV) loans or other accounts receivable acquired in the normal course of business; and

"(V) shares or assets of an insured institution described in paragraph (10) of this subsection; or".

Subsec. (f)(3)(B)(ii). Pub. L. 101-73, §1219, added cl. (ii) and struck out former cl. (ii) which read as follows: "offer or market products or services of an affiliate that are not permissible for bank holding companies to provide under subsection (c)(8) of this section, or permit its products or services to be offered or marketed by or through an affiliate (other than an affiliate that engages only in activities permissible for bank holding companies under subsection (c)(8) of this section), unless such products or services were being so offered or marketed as of March 5, 1987, and then only in the same manner in which they were being offered or marketed as of that date;".

Subsec. (f)(10). Pub. L. 101-73, §603(b)(1), substituted "and (ii)(VIII)" for "and (ii)(V)", and in subpar. (A) inserted reference to section 13(k) of the Federal Deposit Insurance Act.

Subsec. (f)(11). Pub. L. 101-73, §603(b)(2), added par. (11).

Subsec. (f)(12), (13). Pub. L. 101-73, §604(b)(1), added pars. (12) and (13).

Subsec. (i). Pub. L. 101-73, §601(a), added subsec. (i).

1988—Subsec. (c)(14)(A). Pub. L. 100-418, §3402(b), added cl. (v) and redesignated former cls. (v) and (vi) as (vi) and (vii), respectively.

Subsec. (c)(14)(G). Pub. L. 100-418, §3402(a), added subpar. (G).

Subsec. (c)(14)(H). Pub. L. 100-418, §3402(c), added subpar. (H).

1987—Pub. L. 100-86, §509(a), repealed Pub. L. 97-320, §141. See 1982 Amendment note below.

Subsec. (a)(2). Pub. L. 100-86, §101(b), inserted at end "Notwithstanding any other provision of this paragraph, if any company that became a bank holding company as a result of the enactment of the Competitive Equality Amendments of 1987 acquired, between March 5, 1987, and August 10, 1987, an institution that became a bank as a result of the enactment of such Amendments, that company shall, upon the enactment of such Amendments, immediately come into compliance with the requirements of this chapter."

Subsec. (c)(8). Pub. L. 100-86, §502(h)(2), struck out semicolon at end and substituted a period and following sentences: "If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;".

Subsecs. (f) to (h). Pub. L. 100-86, §101(c), added subsecs. (f) to (h).

1986—Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1983—Subsec. (c)(8)(F). Pub. L. 97-457, §30(1), inserted proviso that such a bank holding company and its subsidiaries may not engage in sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C).

Subsec. (c)(8)(G). Pub. L. 97-457, §30(2), struck out proviso that such bank holding company and its subsidiaries may not engage in sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C).

1982—Subsec. (a). Pub. L. 97-320, §433(b), substituted "December 31, 1984" for "December 31, 1982".

Subsec. (c)(8). Pub. L. 97-320, §§118(a), 601, inserted specification that providing insurance is not being closely related to banking or managing or controlling banks for purposes of this subsection, exceptions thereto in cls. (A) through (G), and the subsequent proviso relating to the sale of life insurance or annuities, and inserted provisions relating to dispensation from the notice and hearing requirement in the event of an emergency.

Pub. L. 97-320, §141(a)(4), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 118 of Pub. L. 97-320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100-86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97-320 note set out under section 1464 of this title.

Subsec. (c)(14). Pub. L. 97-290 added par. (14).

1980—Subsec. (a). Pub. L. 96-221 inserted provisions relating to extension of period ending Dec. 31, 1980, to Dec. 31, 1982.

1978—Subsec. (c). Pub. L. 95-630 substituted "The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of title 26, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred" for "The prohibitions in this section shall not apply to any bank holding company which is (i) a labor, agricultural, or horticultural organization and which is exempt from taxation under section 501 of title 26".

1977—Subsec. (c)(2). Pub. L. 95-188 substituted "shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in good faith, but such shares shall be disposed of within a period of two years" for "shares acquired by a bank in satisfaction of a debt previously contracted in good faith, but such bank shall dispose of such shares within a period of two years".

1970—Subsec. (a). Pub. L. 91-607, §103(1), (2), in par. (2) of first sentence, inserted provision respecting prohibition in the case of a company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after Dec. 31, 1980, substituted "engage in any activities" for "engage in any business", designated existing provisions as cl. (A), substituting therein "and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries" for "or of furnishing services to or performing services for any bank of which it owns or controls 25 per centum or more of the voting shares", added cl. (B) and provisions respecting activities of a company covered in 1970, and termination of authority for engaging in the activities, authorization of bank holding company to engage in activities through acquisition of interest in or assets of a going concern engaged in the activities, and retention for period of ten years ownership or control of shares in a company carrying on the activity, where the activity of the company has been terminated; and, in second sentence substituted "two year period" for "period", respectively.

Subsec. (c). Pub. L. 91-607, §103(3), (6), designated existing provisions of text preceding par. (1) as cl. (i) and added cl. (2), and inserted concluding text following par. (13) deeming an application under par. (8) as granted upon failure of Board to act within prescribed period and requiring the Board in the report to Congress to include a description and a statement of reasons for approval of each activity under par. (8), respectively.

Subsec. (c)(8). Pub. L. 91-607, §103(4), inserted provisions respecting criteria to be used for determining whether particular activity is proper incident to banking and provision for differentiation by orders and regulations between de novo activities and going concern activities, deleted description of company activities as being of a financial, fiduciary, or insurance nature, specific language respecting determination on basis of record made at the hearing, and provision respecting the close relationship of the activities making it unnecessary for prohibitions of this section to apply in order to carry out the purposes of this chapter, substituted "opportunity for hearing" for "hearing", and provided for determination by regulation.

Subsec. (c)(9). Pub. L. 91-607, §103(5), extended exemption to company activities, substituted provision respecting conduct of greater part of company's business; outside the United States for prior provision respecting engaging principally in the banking business outside the United States, and conditioned exemption on Board determination by regulation or order that the exemption would not be substantially at variance with the purposes of this chapter and would be in the public interest.

Subsec. (c)(11) to (13). Pub. L. 91-607, §103(6), added pars. (11) to (13).

Subsecs. (d), (e). Pub. L. 91-607, §103(7), added subsec. (d) and redesignated former subsec. (d) as (e).

1966—Subsec. (a). Pub. L. 89-485, §8(a), extended until December 31, 1978, the deadline for divestiture by bank holding companies of their nonbanking interests in the case of any company that has been continuously affiliated since May 15, 1955, with a company which was registered under the Investment Company Act of 1940, prior to May 15, 1955, in such a manner as to constitute an affiliated company within the meaning of that Act.

Subsec. (c). Pub. L. 89-485, §8(b), limited the exception granted companies engaged in liquidating assets acquired by the bank holding company by requiring that, to qualify for the exception, the company be engaged solely in liquidating assets acquired from the holding company and its banks or from another source before it became subject to this chapter and not merely engaged in the general liquidating business with only a part of its operations performed for the holding company system, authorized the grant of one year extensions up to a

total of three years to the two year period allowed for the disposal of shares acquired by a bank in satisfaction of a debt previously contracted in good faith, substituted reference, in par. (4), to shares held under a trust that constitutes a company as defined in section 1841(b) and except as provided in pars. (2) and (3) of section 1841(g) of this title for reference to shares held for the benefit of the shareholders of a bank holding company or any of its subsidiaries, and eliminated the requirement that, in order to qualify for the exemption allowing a bank holding company to hold shares in a nonbanking company, the shares do not exceed 5 per centum of the holding company's assets in value.

Subsec. (d). Pub. L. 89-485, §8(c), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 354(2)(A) of Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(e) of Pub. L. 111-203 effective on the transfer date, see section 604(j) of Pub. L. 111-203, set out as a note under section 1462 of this title.

Amendment by section 606(a) of Pub. L. 111-203 effective on the transfer date, see section 606(c) of Pub. L. 111-203, set out as a note under section 1467a of this title.

Amendment by section 623(b)(1) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

SHORT TITLE OF 1982 AMENDMENT

For short title of title II of Pub. L. 97-290 as the "Bank Export Services Act", see Short Title of 1982 Amendment note set out under section 1841 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsection (c) (last sentence) of this section is listed on page 171), see section 3003 of Pub. L. 104-66, set out as a note under section 1113 of Title 31, Money and Finance.

DETERMINATIONS REGARDING REAL ESTATE BROKERAGE ACTIVITY OR REAL ESTATE MANAGEMENT ACTIVITY

Pub. L. 111-8, div. D, title VI, §624, Mar. 11, 2009, 123 Stat. 678, provided that: "Notwithstanding any other provision of law, for fiscal year 2009 and each fiscal year thereafter, neither the Board of Governors of the Federal Reserve System nor the Secretary of the Treasury may determine, by rule, regulation, order, or otherwise, for purposes of section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)], or section 5136A of the Revised Statutes of the United States [12 U.S.C. 24a], that real estate brokerage activity or real estate management activity is an activity that is financial in nature, is incidental to any financial activity, or is complementary to a financial activity. For purposes of this section, 'real estate brokerage activity' shall mean 'real estate brokerage', and 'real estate management activity' shall mean 'property management', as those terms were understood by the Board of Governors of the Federal Reserve System prior to March 11, 2000."

REPORT TO CONGRESS ON NEW ACTIVITIES OF FINANCIAL HOLDING COMPANIES

Pub. L. 106–102, title I, §103(d), Nov. 12, 1999, 113 Stat. 1351, provided that by the end of the 4-year period beginning on Nov. 12, 1999, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury were to submit a joint report to Congress containing a summary of new activities, including grandfathered commercial activities, in which any financial holding company is engaged pursuant to subsection (k)(1) or (n) of this section.

CONSIDERATION OF MERCHANT BANKING ACTIVITIES BY FINANCIAL SUBSIDIARIES

Pub. L. 106–102, title I, §122, Nov. 12, 1999, 113 Stat. 1381, provided that: "After the end of the 5-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act [Nov. 12, 1999], the Board of Governors of the Federal Reserve System and the Secretary of the Treasury may, if appropriate, after considering—

"(1) the experience with the effects of financial modernization under this Act [see Tables for classification] and merchant banking activities of financial holding companies;

"(2) the potential effects on depository institutions and the financial system of allowing merchant banking activities in financial subsidiaries; and

"(3) other relevant facts;

jointly adopt rules that permit financial subsidiaries to engage in merchant banking activities described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)(4)(H)], under such terms and conditions as the Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly determine to be appropriate."

MODIFICATION OF PRIOR APPROVALS

Pub. L. 101–73, title VI, §601(b), Aug. 9, 1989, 103 Stat. 409, provided that: "If the Board of Governors of the Federal Reserve System, in approving an application by a bank holding company to acquire a savings association, imposed any restriction that would have been prohibited under section 4(i)(2) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(i)(2)] (as added by subsection (a) of this section) if that section had been in effect when the application was approved, the Board shall modify that approval in a manner consistent with that section."

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97–320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

BANK EXPORT SERVICES

Pub. L. 97–290, title II, §202, Oct. 8, 1982, 96 Stat. 1235, provided that: "The Congress hereby declares that it is the purpose of this title [enacting section 635a–4 of this title, amending sections 372 and 1843 of this title, and enacting provisions set out as notes under section 1843 of this title] to provide for meaningful and effective participation by bank holding companies, bankers' banks, and Edge Act [12 U.S.C. 611 et seq.] corporations, in the financing and development of export trading companies in the United States. In furtherance of such purpose, the Congress intends that, in implementing its authority under section 4(c)(14) of the Bank Holding Company Act of 1956 [subsec. (c)(14) of this section] the Board of Governors of the Federal Reserve System should pursue regulatory policies that—

"(1) provide for the establishment of export trading companies with powers sufficiently broad to enable them to compete with similar foreign-owned institutions in the United States and abroad;

"(2) afford to United States commerce, industry, and agriculture, especially small- and medium-size firms, a means of exporting at all times;

"(3) foster the participation by regional and smaller banks in the development of export trading

companies; and

"(4) facilitate the formation of joint venture export trading companies between bank holding companies and nonbank firms that provide for the efficient combination of complementary trade and financing services designed to create export trading companies that can handle all of an exporting company's needs."

REPORT TO CONGRESS BY FEDERAL RESERVE BOARD REGARDING CHANGES IN FINANCING OF UNITED STATES EXPORTS

Pub. L. 97-290, title II, §205, Oct. 8, 1982, 96 Stat. 1238, required Federal Reserve Board, within two years after Oct. 8, 1982, to report to Congress its recommendations with respect to implementation of this section, on any changes in United States law to facilitate financing of United States exports, and on effects of ownership of United States banks by foreign banking organizations affiliated with trading companies doing business in United States.

¹ See References in Text note below.

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

³ So in original. The period probably should be a semicolon.

§1844. Administration

(a) Registration of bank holding company

Within one hundred and eighty days after May 9, 1956, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this chapter. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. A declaration filed in accordance with section 1843(l)(1)(C) ¹ of this title shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 1842 of this title.

(b) Regulations and orders

The Board is authorized to issue such regulations and orders, including regulations and orders relating to the capital requirements for bank holding companies, as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof. In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.

(c) Reports and examinations

(1) Reports

(A) In general

The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the bank holding company; and

(ii) compliance by the bank holding company or subsidiary with—

(I) this chapter;

(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provision of Federal law.

(B) Use of existing reports and other supervisory information

The Board shall, to the fullest extent possible, use—

- (i) reports and other supervisory information that the bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;
- (ii) externally audited financial statements of the bank holding company or subsidiary;
- (iii) information otherwise available from Federal or State regulatory agencies; and
- (iv) information that is otherwise required to be reported publicly.

(C) Availability

Upon the request of the Board, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).

(2) Examinations

(A) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], the Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to—

- (i) inform the Board of—
 - (I) the nature of the operations and financial condition of the bank holding company and the subsidiary;
 - (II) the financial, operational, and other risks within the bank holding company system that may pose a threat to—
 - (aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or
 - (bb) the stability of the financial system of the United States; and
 - (III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and
- (ii) monitor the compliance of the bank holding company and the subsidiary with—
 - (I) this chapter;
 - (II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and
 - (III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

(B) Use of reports to reduce examinations

For purposes of this paragraph, the Board shall, to the fullest extent possible, rely on—

- (i) examination reports made by other Federal or State regulatory agencies relating to a bank holding company and any subsidiary of a bank holding company; and
- (ii) the reports and other information required under paragraph (1).

(C) Coordination with other regulators

The Board shall—

- (i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a bank holding company before commencing an examination of the subsidiary under this section; and

(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.

(3) Capital

(A) In general

The Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company that—

(i) is not a depository institution; and

(ii) is—

(I) in compliance with the applicable capital requirements of its Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

(II) properly registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or with any State; or

(III) is licensed as an insurance agent with the appropriate State insurance authority.

(B) Rule of construction

Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

(i) activities of a registered investment adviser other than with respect to investment advisory activities or activities incidental to investment advisory activities; or

(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

(C) Limitations on indirect action

In developing, establishing, or assessing bank holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board may not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], unless the investment company is—

(i) a bank holding company; or

(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than \$1,000,000.

(4) Functional regulation of securities and insurance activities

(A) Securities activities

Securities activities conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by the Securities and Exchange Commission, and by relevant State securities authorities, as appropriate, subject to section 6701 of title 15, to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(B) Insurance activities

Subject to section 6701 of title 15, insurance agency and brokerage activities and activities as principal conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by a State insurance authority to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(5) Definition

For purposes of this subsection, the term "functionally regulated subsidiary" means any company—

(A) that is not a bank holding company or a depository institution; and

(B) that is—

(i) a broker or dealer that is registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(ii) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(iii) an investment company that is registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.];

(iv) an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or

(v) an entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities.

(d) Reports to the Congress; recommendations

Before the expiration of two years following May 9, 1956, and each year thereafter in the Board's annual report to the Congress, the Board shall report to the Congress the results of the administration of this chapter, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this chapter, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e) Termination of activities or ownership or control of nonbank subsidiaries constituting serious risk

(1) Notwithstanding any other provision of this chapter, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this chapter or with the Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company; or

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective

and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 1848 of this title, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) Powers of Board respecting applications, examinations, or other proceedings

In the course of or in connection with an application, examination, investigation or other proceeding under this chapter, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this chapter, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this chapter may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both.

(g) Authority of State insurance regulator and the Securities and Exchange Commission

(1) In general

Notwithstanding any other provision of law, any regulation, order, or other action of the Board that requires a bank holding company to provide funds or other assets to a subsidiary depository institution shall not be effective nor enforceable with respect to an entity described in subparagraph (A) if—

(A) such funds or assets are to be provided by—

(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

(ii) an affiliate of the depository institution that is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding

company shall not provide such funds or assets because such action would have a material ² adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

(2) Notice to State insurance authority or SEC required

If the Board requires a bank holding company, or an affiliate of a bank holding company, that is an insurance company or a broker, dealer, investment company, or investment adviser described in paragraph (1)(A) to provide funds or assets to a depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

(3) Divestiture in lieu of other action

If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the depository institution.

(4) Conditions before divestiture

During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the depository institution, including restricting or prohibiting transactions between the depository institution and any affiliate of the institution, as are appropriate under the circumstances.

(5) Rule of construction

No provision of this subsection may be construed as limiting or otherwise affecting, except to the extent specifically provided in this subsection, the regulatory authority, including the scope of the authority, of any Federal agency or department with regard to any entity that is within the jurisdiction of such agency or department.

(h) Data standards

(1) Requirement

The Board shall adopt data standards for all information that, through a collection of information, is regularly filed with or submitted to the Board by any bank holding company in a report under subsection (c).

(2) Consistency

The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of this title, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 5334.

(May 9, 1956, ch. 240, §5, 70 Stat. 137; Pub. L. 95–630, title I, §§105(a), 106(b), Nov. 10, 1978, 92 Stat. 3646, 3648; Pub. L. 106–102, title I, §§111, 112(a), 116, Nov. 12, 1999, 113 Stat. 1362, 1366, 1372; Pub. L. 111–203, title III, §354(3), title VI, §§604(a)–(c)(1), 616(a), July 21, 2010, 124 Stat. 1547, 1599–1601, 1615; Pub. L. 117–263, div. E, title LVIII, §5861(c), Dec. 23, 2022, 136 Stat. 3434.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act May 9, 1956, ch. 240, 70 Stat.

133, known as the Bank Holding Company Act of 1956, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

Section 1843(l)(1)(C) of this title, referred to in subsec. (a), was redesignated section 1843(l)(1)(D) of this title by Pub. L. 111–203, title VI, §606(a)(2), July 21, 2010, 124 Stat. 1607.

The Consumer Financial Protection Act of 2010, referred to in subsec. (c)(2)(A), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (c)(3)(A)(ii)(II), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in subsecs. (c)(3)(C), (5)(B)(iii) and (g)(1)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsecs. (c)(5)(B)(i) and (g)(1)(A), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (e)(1), is Pub. L. 89–695, Oct. 16, 1966, 80 Stat. 1028. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 1464 of this title and Tables.

AMENDMENTS

2022—Subsec. (h). Pub. L. 117–263 added subsec. (h).

2010—Subsec. (b). Pub. L. 111–203, §616(a), inserted ", including regulations and orders relating to the capital requirements for bank holding companies," after "orders" and "In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company." at the end.

Subsec. (c)(1)(A)(ii). Pub. L. 111–203, §604(a)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: "compliance by the company or subsidiary with applicable provisions of this chapter or any other Federal law that the Board has specific jurisdiction to enforce against such company or subsidiary."

Subsec. (c)(1)(B). Pub. L. 111–203, §604(a)(2), added subpar. (B) and struck out former subpar. (B) which related to use of existing reports.

Subsec. (c)(1)(C). Pub. L. 111–203, §604(a)(3), added subpar. (C).

Subsec. (c)(2). Pub. L. 111–203, §604(b), amended par. (2) generally. Prior to amendment, par. (2) consisted of subpars. (A) to (E) relating to examination authority for bank holding companies and subsidiaries, functionally regulated subsidiaries, restricted focus of examinations, deference to bank examinations, and deference to other examinations, respectively.

Subsec. (c)(5)(B)(v). Pub. L. 111–203, §604(c)(1), added cl. (v) and struck out former cl. (v) which read as follows: "an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities."

Subsec. (f). Pub. L. 111–203, §354(3), substituted "subpoenas" for "subpenas" in two places, "subpoena" for "subpena" wherever appearing, and "subpoenaed" for "subpenaed".

1999—Subsec. (a). Pub. L. 106–102, §116(a), inserted at end "A declaration filed in accordance with section 1843(l)(1)(C) of this title shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 1842 of this title."

Subsec. (c). Pub. L. 106–102, §111, inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: "The Board from time to time may require reports under oath to keep it informed as to whether the provisions of this chapter and such regulations and orders issued thereunder have been complied with; and the Board may make examinations of each bank holding company and each subsidiary thereof, the cost of which shall be assessed against, and paid by, such holding company. The Board

shall, as far as possible, use the report of examinations made by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this section."

Subsec. (e)(1). Pub. L. 106–102, §116(b), in first sentence, substituted "Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—" along with subpar. (A) designation and "order" for "Financial Institutions Supervisory Act of 1966, order" and "shareholders of the bank holding company; or" along with subpar. (B) for "shareholders of the bank holding company.", designated second sentence as concluding provisions, and substituted "The distribution referred to in subparagraph (A)" for "Such distribution".

Subsec. (g). Pub. L. 106–102, §112(a), added subsec. (g).

1978—Subsec. (e). Pub. L. 95–630, §105(a), added subsec. (e).

Subsec. (f). Pub. L. 95–630, §106(b), added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 354(3) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(a)–(c)(1) of Pub. L. 111–203 effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as a note under section 1462 of this title.

Amendment by section 616(a) of Pub. L. 111–203 effective on the transfer date, see section 616(e) of Pub. L. 111–203, set out as a note under section 1467a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (d) of this section is listed on page 171), see section 3003 of Pub. L. 104–66, set out as a note under section 1113 of Title 31, Money and Finance.

RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5864 of Pub. L. 117–263, set out as a note under section 253 of this title.

¹ [*See References in Text note below.*](#)

² [*So in original. Probably should be "materially".*](#)

§1845. Repealed. Pub. L. 89–485, §9, July 1, 1966, 80 Stat. 240

Section, act May 9, 1956, ch. 240, §6, 70 Stat. 137, prohibited any subsidiary bank from lending to or investing in its parent holding company or a fellow subsidiary bank. See section 371c of this title.

§1846. Reservation of rights to States

(a) In general

No provision of this chapter shall be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to companies, banks,

bank holding companies, and subsidiaries thereof.

(b) State taxation authority not affected

No provision of this chapter shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(May 9, 1956, ch. 240, §7, 70 Stat. 138; Pub. L. 100–86, title I, §101(f), Aug. 10, 1987, 101 Stat. 563; Pub. L. 103–328, title I, §101(b), Sept. 29, 1994, 108 Stat. 2341.)

EDITORIAL NOTES

AMENDMENTS

1994—Pub. L. 103–328 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Pub. L. 100–86 substituted "No provision of this chapter shall" for "The enactment by the Congress of this chapter shall not" and inserted "companies," before "banks,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–328 effective at end of 1-year period beginning on Sept. 29, 1994, see section 101(e) of Pub. L. 103–328, set out as a note under section 1828 of this title.

§1847. Penalties

(a) Criminal penalty

(1) Whoever knowingly violates any provision of this chapter or, being a company, violates any regulation or order issued by the Board under this chapter, shall be imprisoned not more than 1 year, fined not more than \$100,000 per day for each day during which the violation continues, or both.

(2) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this chapter shall be imprisoned not more than 5 years, fined not more than \$1,000,000 per day for each day during which the violation continues, or both.

Every officer, director, agent, and employee of a bank holding company shall be subject to the same penalties for false entries in any book, report, or statement of such bank holding company as are applicable to officers, directors, agents, and employees of member banks for false entries in any books, reports, or statements of member banks under section 1005 of title 18.

(b) Civil money penalty

(1) Penalty

Any company which violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

(2) Assessment; etc.

Any penalty imposed under paragraph (1) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(3) Hearing

The company or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(4) Disbursement

All penalties collected under authority of this subsection shall be deposited into the Treasury.

(5) "Violate" defined

For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

(c) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a bank holding company (including a separation caused by the deregistration of such a company) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company (whether such date occurs before, on, or after August 9, 1989).

(d) Penalty for failure to make reports

(1) First tier

Any company which—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error—

(i) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board pursuant to this chapter, within the period of time specified by the Board; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The company shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any company which—

(A) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board pursuant to this chapter, within the period of time specified by the Board; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the

accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board may, in its discretion, assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such company, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment; etc.

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board in the manner provided in subsection (b) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing

Any company against which any penalty is assessed under this subsection shall be afforded an agency hearing if such company submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

(May 9, 1956, ch. 240, §8, 70 Stat. 138; Pub. L. 95-630, title I, §106(a), Nov. 10, 1978, 92 Stat. 3647; Pub. L. 97-320, title IV, §424(a), (d)(4), Oct. 15, 1982, 96 Stat. 1522, 1523; Pub. L. 101-73, title IX, §§905(i), 907(j), 911(e), Aug. 9, 1989, 103 Stat. 461, 475, 481.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-73, §907(j)(1), substituted heading and pars. (1) and (2) for first two sentences which read as follows: "Any company which willfully violates any provision of this chapter, or any regulation or order issued by the Board pursuant thereto, shall upon conviction be fined not more than \$1,000 for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this chapter shall upon conviction be fined not more than \$10,000 or imprisoned not more than one year, or both."

Subsec. (b). Pub. L. 101-73, §907(j)(2), added headings and amended text generally. Prior to amendment, subsec. (b) read as follows:

"(1) Any company which violates or any individual who participates in a violation of any provision of this chapter, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues: *Provided*, That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in the section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(2) In determining the amount of the penalty the Board shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the company or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

"(3) The company or person assessed shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in section 1848 of this title. If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

"(4) If any company or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Board, the Board shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

"(5) The Board shall promulgate regulations establishing procedures necessary to implement this subsection.

"(6) All penalties collected under authority of this subsection shall be covered into the Treasury of the United States."

Subsec. (c). Pub. L. 101-73, §905(i), added subsec. (c).

Subsec. (d). Pub. L. 101-73, §911(e), added subsec. (d).

1982—Subsec. (b)(1). Pub. L. 97-320 inserted proviso giving the Board discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted "may be assessed" for "shall be assessed".

1978—Pub. L. 95-630 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(j) of Pub. L. 101-73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of \$5,000 and \$25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(l) of Pub. L. 101-73, set out as a note under section 93 of this title.

Amendment by section 911(e) of Pub. L. 101-73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101-73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as a note under section 93 of this title.

§1848. Judicial review

Any party aggrieved by an order of the Board under this chapter may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business or in the Court of Appeals in the District of Columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have the jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

(May 9, 1956, ch. 240, §9, 70 Stat. 138; Pub. L. 85-791, §34, Aug. 28, 1958, 72 Stat. 951; Pub. L. 89-485, §10, July 1, 1966, 80 Stat. 240.)

EDITORIAL NOTES

AMENDMENTS

1966—Pub. L. 89-485 reduced from 60 to 30 days the period allowed for the filing of a petition to obtain judicial review of a Board order.

1958—Pub. L. 85-791 substituted, in second sentence, "transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28" for "served upon the Board, and thereupon the Board shall certify and file in the court a transcript of the record made before the Board", and in third sentence, "such petition" for "the transcript".

§1848a. Repealed. Pub. L. 111-203, title VI, §604(c)(2), July 21, 2010, 124 Stat. 1601

Section, act May 9, 1956, ch. 240, §10A, as added Pub. L. 106-102, title I, §113, Nov. 12, 1999, 113 Stat. 1368, related to limitation on rulemaking, prudential, supervisory, and enforcement authority of the Board.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective on the transfer date, see section 604(j) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1462 of this title.

§1849. Saving provision

(a) General rule

Nothing herein contained shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any prohibited antitrust or monopolistic act, action, or conduct, except as specifically provided in this section.

(b) Antitrust review

(1) In general

The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of a proposed acquisition, merger, or consolidation transaction and, if the transaction also involves an acquisition under section 1843 of this title, the Board shall also notify the Federal Trade Commission of such approval. If the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction, the transaction may be consummated immediately upon approval by the Board. If the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Board. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any acquisition, merger, or consolidation transaction approved pursuant to section 1842 of this title on the ground that such transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the Board is directed to apply under section 1842 of this title. Upon the consummation of an acquisition, merger, or consolidation transaction approved under section 1842 of this title in compliance with this chapter and after the termination of any antitrust litigation commenced within the period prescribed in this section, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this chapter shall exempt any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of such transaction.

(2) Section 1823(f) cases

(A) If—

- (i) the Federal Deposit Insurance Corporation learns that a bank insured by such Corporation

is in danger of closing; and

(ii) the Corporation is considering assisting the acquisition of such bank and its affiliated banks by another bank or holding company under section 1823(f) of this title and such acquisition is subject to the approval of the Board under section 1842 of this title;

the Corporation shall immediately notify the Board of such facts.

(B) Upon receipt of notice from the Federal Deposit Insurance Corporation under subparagraph (A) or at such earlier time as deemed appropriate by the Board, the Board shall immediately notify the Attorney General of the United States of the facts concerning the possible acquisition.

(C) Within 5 days of receiving notice under subparagraph (B), the Attorney General shall notify the Board in writing of the Attorney General's preliminary finding as to the consistency of the possible acquisition with the antitrust laws.

(D) The Board may reduce or eliminate the post-approval waiting period established under paragraph (1) for an acquisition to which this paragraph applies, except that such period may not be eliminated or reduced to less than 5 days without the concurrence of the Attorney General.

(c) Antitrust proceedings; Board and State banking agency as party; representation by counsel

In any action brought under the antitrust laws arising out of any acquisition, merger, or consolidation transaction approved by the Board under section 1842 of this title, the Board and any State banking supervisory agency having jurisdiction within the State involved, may appear as a party of its own motion and as of right, and be represented by its counsel.

(d) Treatment of merger transactions consummated prior or subsequent to May 9, 1956, and not in litigation prior to July 1, 1966

Any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title which was consummated at any time prior or subsequent to May 9, 1956, and as to which no litigation was initiated by the Attorney General prior to July 1, 1966, shall be conclusively presumed not to have been in violation of any antitrust laws other than section 2 of title 15.

(e) Antitrust litigation; substantive law applicable to proceedings pending on or after July 1, 1966, with respect to merger transactions

Any court having pending before it on or after July 1, 1966, any litigation initiated under the antitrust laws by the Attorney General with respect to any acquisition, merger, or consolidation of the kind described in section 1842(a) of this title shall apply the substantive rule of law set forth in section 1842 of this title.

(f) "Antitrust laws" defined

For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(May 9, 1956, ch. 240, §11, 70 Stat. 146; Pub. L. 89-485, §11, July 1, 1966, 80 Stat. 240; Pub. L. 91-607, title I, §104, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 95-188, title III, §303, Nov. 16, 1977, 91 Stat. 1390; Pub. L. 100-86, title V, §502(h)(3), Aug. 10, 1987, 101 Stat. 628; Pub. L. 103-325, title III, §321(a), Sept. 23, 1994, 108 Stat. 2226; Pub. L. 106-102, title I, §131, Nov. 12, 1999, 113 Stat. 1382.)

EDITORIAL NOTES

REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (f), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (the Clayton Act), referred to in subsec. (f), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in

Text note set out under section 12 of Title 15 and Tables.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–102 inserted before period at end of first sentence "and, if the transaction also involves an acquisition under section 1843 of this title, the Board shall also notify the Federal Trade Commission of such approval".

1994—Subsec. (b)(1). Pub. L. 103–325 inserted before period at end of fourth sentence "or, if the Board has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the Board with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval".

1987—Subsec. (b). Pub. L. 100–86 designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (b). Pub. L. 95–188 authorized a proposed acquisition, merger, or consolidation transaction to be consummated immediately upon approval by the Board where the Board has found that it must act immediately in order to prevent the probable failure of a bank or bank holding company involved in any such transaction; prohibited a transaction from being consummated before the fifth calendar day after the date of approval by the Board where the Board has advised the Comptroller of the Currency or the State supervisory authority, as the case may be, of the existence of an emergency requiring expeditious action and has required the submission of views and recommendations within ten days; continued for all other cases the thirty day waiting period after date of approval by the Board for consummation of the transaction; and substituted provision for commencement of stay actions prior to the earliest time at which the transaction approval under section 1842 of this title might be consummated for prior provision for commencement of such stay actions within the thirty-day waiting period.

1970—Subsec. (b). Pub. L. 91–607, §104(a), substituted "section 1842 of this title" for "this chapter" where appearing first two times, and inserted "approved under section 1842 of this title" in second sentence before "shall be commended" and in last sentence before "in compliance with this chapter".

Subsec. (c). Pub. L. 91–607, §104(b), substituted "under section 1842 of this title" for "pursuant to this chapter".

1966—Pub. L. 89–485 designated existing provisions as subsec. (a), inserted "except as specifically provided in this section", and added subsecs. (b) to (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

§1850. Acquisition of subsidiary and tying arrangement: Federal Reserve Board proceedings; application for authorization; competitor as party in interest and person aggrieved; judicial review

With respect to any proceeding before the Federal Reserve Board wherein an applicant seeks authority to acquire a subsidiary which is a bank under section 1842 of this title or to engage in an activity otherwise prohibited under chapter 22 of this title, a party who would become a competitor of the applicant or subsidiary thereof by virtue of the applicant's or its subsidiary's acquisition, entry into the business involved, or activity, shall have the right to be a party in interest in the proceeding and, in the event of an adverse order of the Board, shall have the right as an aggrieved party to obtain judicial review thereof as provided in section 1848 of this title or as otherwise provided by law.

(Pub. L. 91–607, title I, §105, Dec. 31, 1970, 84 Stat. 1766; Pub. L. 106–102, title I, §102(b)(1), Nov. 12, 1999, 113 Stat. 1341.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Bank Holding Company Act Amendments of 1970, and not as part of the

Bank Holding Company Act of 1956 which comprises this chapter.

AMENDMENTS

1999—Pub. L. 106–102 struck out ", to engage directly or indirectly in a nonbanking activity pursuant to section 1843 of this title," after "section 1842 of this title".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

§1850a. Securities holding companies

(a) Definitions

In this section—

- (1) the term "associated person of a securities holding company" means a person directly or indirectly controlling, controlled by, or under common control with, a securities holding company;
- (2) the term "foreign bank" has the same meaning as in section 3101(7) of this title;
- (3) the term "insured bank" has the same meaning as in section 1813 of this title;
- (4) the term "securities holding company"—

(A) means—

- (i) a person (other than a natural person) that owns or controls 1 or more brokers or dealers registered with the Commission; and
- (ii) the associated persons of a person described in clause (i); and

(B) does not include a person that is—

- (i) a nonbank financial company supervised by the Board under title I; ¹
- (ii) an insured bank (other than an institution described in subparagraphs ² (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) ³ or a savings association;
- (iii) an affiliate of an insured bank (other than an institution described in subparagraphs ² (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)) ³ or an affiliate of a savings association;
- (iv) a foreign bank, foreign company, or company that is described in section 3106(a) of this title;
- (v) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.); or
- (vi) subject to comprehensive consolidated supervision by a foreign regulator;

(5) the term "supervised securities holding company" means a securities holding company that is supervised by the Board of Governors under this section; and

(6) the terms "affiliate", "bank", "bank holding company", "company", "control", "savings association", and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(b) Supervision of a securities holding company not having a bank or savings association affiliate

(1) In general

A securities holding company that is required by a foreign regulator or provision of foreign law to be subject to comprehensive consolidated supervision may register with the Board of Governors under paragraph (2) to become a supervised securities holding company. Any securities holding

company filing such a registration shall be supervised in accordance with this section, and shall comply with the rules and orders prescribed by the Board of Governors applicable to supervised securities holding companies.

(2) Registration as a supervised securities holding company

(A) Registration

A securities holding company that elects to be subject to comprehensive consolidated supervision shall register by filing with the Board of Governors such information and documents as the Board of Governors, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

(B) Effective date

A securities holding company that registers under subparagraph (A) shall be deemed to be a supervised securities holding company, effective on the date that is 45 days after the date of receipt of the registration information and documents under subparagraph (A) by the Board of Governors, or within such shorter period as the Board of Governors, by rule or order, may determine.

(c) Supervision of securities holding companies

(1) Recordkeeping and reporting

(A) Recordkeeping and reporting required

Each supervised securities holding company and each affiliate of a supervised securities holding company shall make and keep for periods determined by the Board of Governors such records, furnish copies of such records, and make such reports, as the Board of Governors determines to be necessary or appropriate to carry out this section, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Form and contents

(i) In general

Any record or report required to be made, furnished, or kept under this paragraph shall—

(I) be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board of Governors may require; and

(II) be provided promptly to the Board of Governors at any time, upon request by the Board of Governors.

(ii) Contents

Records and reports required to be made, furnished, or kept under this paragraph may include—

(I) a balance sheet or income statement of the supervised securities holding company or an affiliate of a supervised securities holding company;

(II) an assessment of the consolidated capital and liquidity of the supervised securities holding company;

(III) a report by an independent auditor attesting to the compliance of the supervised securities holding company with the internal risk management and internal control objectives of the supervised securities holding company; and

(IV) a report concerning the extent to which the supervised securities holding company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) Use of existing reports

(A) In general

The Board of Governors shall, to the fullest extent possible, accept reports in fulfillment of the requirements of this paragraph that a supervised securities holding company or an affiliate

of a supervised securities holding company has been required to provide to another regulatory agency or a self-regulatory organization.

(B) Availability

A supervised securities holding company or an affiliate of a supervised securities holding company shall promptly provide to the Board of Governors, at the request of the Board of Governors, any report described in subparagraph (A), as permitted by law.

(3) Examination authority

(A) Focus of examination authority

The Board of Governors may make examinations of any supervised securities holding company and any affiliate of a supervised securities holding company to carry out this subsection, to prevent evasions thereof, and to monitor compliance by the supervised securities holding company or affiliate with applicable provisions of law.

(B) Deference to other examinations

For purposes of this subparagraph, the Board of Governors shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary or any institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)).

(d) Capital and risk management

(1) In general

The Board of Governors shall, by regulation or order, prescribe capital adequacy and other risk management standards for supervised securities holding companies that are appropriate to protect the safety and soundness of the supervised securities holding companies and address the risks posed to financial stability by supervised securities holding companies.

(2) Differentiation

In imposing standards under this subsection, the Board of Governors may differentiate among supervised securities holding companies on an individual basis, or by category, taking into consideration the requirements under paragraph (3).

(3) Content

Any standards imposed on a supervised securities holding company under this subsection shall take into account—

(A) the differences among types of business activities carried out by the supervised securities holding company;

(B) the amount and nature of the financial assets of the supervised securities holding company;

(C) the amount and nature of the liabilities of the supervised securities holding company, including the degree of reliance on short-term funding;

(D) the extent and nature of the off-balance sheet exposures of the supervised securities holding company;

(E) the extent and nature of the transactions and relationships of the supervised securities holding company with other financial companies;

(F) the importance of the supervised securities holding company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the financial system; and

(G) the nature, scope, and mix of the activities of the supervised securities holding company.

(4) Notice

A capital requirement imposed under this subsection may not take effect earlier than 180 days after the date on which a supervised securities holding company is provided notice of the capital

requirement.

(e) Other provisions of law applicable to supervised securities holding companies

(1) Federal Deposit Insurance Act

Subsections (b), (c) through (s), and (u) of section 1818 of this title shall apply to any supervised securities holding company, and to any subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, in the same manner as such subsections apply to a bank holding company for which the Board of Governors is the appropriate Federal banking agency. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank or an institution described in subparagraph (D), (F), or (H) of section 2(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2))) of a supervised securities holding company, the Board of Governors shall be deemed the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Bank Holding Company Act of 1956

Except as the Board of Governors may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent a bank holding company is subject to such provisions, except that a supervised securities holding company may not, by reason of this paragraph, be deemed to be a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(Pub. L. 111–203, title VI, §618, July 21, 2010, 124 Stat. 1616.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title I, referred to in subsec. (a)(4)(B)(i), is title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§5311 et seq.) of chapter 53 of this title. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(4)(B)(v), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (e)(2), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

CODIFICATION

Section was enacted as part of the Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010, and also as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and not as part of the Bank Holding Company Act of 1956 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

DEFINITIONS

For definitions of terms used in this section, see section 5301 of this title.

¹ [*See References in Text note below.*](#)

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

³ So in original. Another closing parenthesis probably should appear.

§1851. Prohibitions on proprietary trading and certain relationships with hedge funds and private equity funds

(a) In general

(1) Prohibition

Unless otherwise provided in this section, a banking entity shall not—

- (A) engage in proprietary trading; or
- (B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

(2) Nonbank financial companies supervised by the Board

Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

(b) Study and rulemaking

(1) Study

Not later than 6 months after July 21, 2010, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

- (A) promote and enhance the safety and soundness of banking entities;
- (B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;
- (C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;
- (D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;
- (E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;
- (F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and
- (G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

(2) Rulemaking

(A) In general

Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

(B) Coordinated rulemaking

(i) Regulatory authority

The regulations issued under this paragraph shall be issued by—

(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act,¹ any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 5301 of this title; and

(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 5301 of this title.

(ii) Coordination, consistency, and comparability

In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

(iii) Council role

The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

(c) Effective date

(1) In general

Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

(A) 12 months after the date of the issuance of final rules under subsection (b); or

(B) 2 years after July 21, 2010.

(2) Conformance period for divestiture

A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant to this section or 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

(3) Extended transition for illiquid funds

(A) Application

The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

(B) Time limit on approval

The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

(4) Divestiture required

Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

(B) the date on which any extensions granted by the Board under paragraph (3) expire.

(5) Additional capital during transition period

Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

(6) Special rulemaking

Not later than 6 months after July 21, 2010, the Board shall issues rules to implement paragraphs (2) and (3).

(d) Permitted activities

(1) In general

Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as "permitted activities") are permitted:

(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

(E) Investments in one or more small business investment companies, as defined in section 102 ¹ of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section

24 of this title, or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of title 26 or a similar State historic tax credit program.

(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except that the hedge fund or private equity fund may share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if—

(I) such investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106);

(II) such investment adviser does not share the same name or a variation of the same name as an insured depository institution, any company that controls an insured depository institution, or any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(III) such name does not contain the word "bank";

(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 1843(c) of this title, provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 1843(c) of this title solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

(2) Limitation on permitted activities

(A) In general

No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

(iii) would pose a threat to the safety and soundness of such banking entity; or

(iv) would pose a threat to the financial stability of the United States.

(B) Rulemaking

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

(3) Capital and quantitative limitations

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

(4) De minimis investment

(A) In general

A banking entity may make and retain an investment in a hedge fund or private equity fund

that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

- (i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or
- (ii) making a de minimis investment.

(B) Limitations and restrictions on investments

(i) Requirement to seek other investors

A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

(ii) Limitations on size of investments

Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall—

(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund;

(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

(iii) Capital

For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

(C) Extension

Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

(e) Anti-evasion

(1) Rulemaking

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rulemaking provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

(2) Termination of activities or investment

Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

(f) Limitations on relationships with hedge funds and private equity funds

(1) In general

No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 371c of this title, with the hedge fund or private equity fund, as if such banking entity and the affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

(2) Treatment as member bank

A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 371c–1 of this title, as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

(3) Permitted services

(A) In general

Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity has taken an equity, partnership, or other ownership interest, if—

(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v) ² are satisfied; and

(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

(B) Treatment of prime brokerage transactions

For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 371c–1 of this title as if the counterparty were an affiliate of the banking entity.

(4) Application to nonbank financial companies supervised by the Board

The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

(g) Rules of construction

(1) Limitation on contrary authority

Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

(2) Sale or securitization of loans

Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner

otherwise permitted by law.

(3) Authority of Federal agencies and State regulatory authorities

Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

(h) Definitions

In this section, the following definitions shall apply:

(1) Banking entity

The term "banking entity" means any insured depository institution (as defined in section 1813 of this title), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term "insured depository institution" does not include an institution—

(A) that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not—

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 248a of this title; or

(II) exercise discount or borrowing privileges pursuant to section 461(b)(7) of this title; or

(B) that does not have and is not controlled by a company that has—

(i) more than \$10,000,000,000 in total consolidated assets; and

(ii) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets.

(2) Hedge fund; private equity fund

The terms "hedge fund" and "private equity fund" mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act [15 U.S.C. 80a–3(c)(1), (7)], or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

(3) Nonbank financial company supervised by the Board

The term "nonbank financial company supervised by the Board" means a nonbank financial company supervised by the Board of Governors, as defined in section 5311 of this title.

(4) Proprietary trading

The term "proprietary trading", when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(5) Sponsor

The term to "sponsor" a fund means—

- (A) to serve as a general partner, managing member, or trustee of a fund;
- (B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or
- (C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under subsection (d)(1)(G)(vi).

(6) Trading account

The term "trading account" means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(7) Illiquid fund

(A) In general

The term "illiquid fund" means a hedge fund or private equity fund that—

(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

(B) Hedge fund

For the purposes of this paragraph, the term "hedge fund" means any fund identified under subsection (h)(2), and does not include a private equity fund, as such term is used in section 80b–3(m) of title 15.

(May 9, 1956, ch. 240, §13, as added Pub. L. 111–203, title VI, §619, July 21, 2010, 124 Stat. 1620; amended Pub. L. 115–174, title II, §§203, 204, May 24, 2018, 132 Stat. 1309.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 8 of the International Banking Act, referred to in subsec. (b)(2)(B)(i)(II), probably means section 8 of Pub. L. 95–369, known as the International Banking Act of 1978, which enacted section 3106 of this title and amended section 1841 of this title.

The Farm Credit Act of 1971, referred to in subsec. (d)(1)(A), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Section 102 of the Small Business Investment Act of 1958, referred to in subsec. (d)(1)(E), probably should be section 103 of the Small Business Investment Act of 1958, which is classified to section 662 of Title 15, Commerce and Trade.

Section 8 of the International Banking Act of 1978, referred to in subsecs. (d)(1)(G)(vi)(I), (II) and (h)(1), is section 8 of Pub. L. 95–369, which enacted section 3106 of this title and amended section 1841 of this title.

The Investment Company Act of 1940, referred to in subsec. (h)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

2018—Subsec. (d)(1)(G)(vi). Pub. L. 115–174, §204(1), inserted before semicolon ", except that the hedge fund or private equity fund may share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if—

"(I) such investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106);

"(II) such investment adviser does not share the same name or a variation of the same name as an insured depository institution, any company that controls an insured depository institution, or any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

"(III) such name does not contain the word 'bank' ".

Subsec. (h)(1). Pub. L. 115–174, §203, substituted "institution—" for "institution that functions solely in a trust or fiduciary capacity, if—" in introductory provisions, inserted "(A) that functions solely in a trust or fiduciary capacity, if—" after introductory provisions, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, of subpar. (A) and realigned margins, redesignated former cls. (i) and (ii) of former subpar. (D) as subcls. (I) and (II), respectively, of cl. (iv) of subpar. (A) and realigned margins, and added subpar. (B).

Subsec. (h)(5)(C). Pub. L. 115–174, §204(2), inserted ", except as permitted under subsection (d)(1)(G)(vi)" before period at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

¹ See References in Text note below.

² So in original. Probably should be "(d)(1)(G)(v)".

§1852. Concentration limits on large financial firms

(a) Definitions

In this section—

(1) the term "Council" means the Financial Stability Oversight Council;

(2) the term "financial company" means—

(A) an insured depository institution;

(B) a bank holding company;

(C) a savings and loan holding company;

(D) a company that controls an insured depository institution;

(E) a nonbank financial company supervised by the Board under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5311 et seq.]; and

(F) a foreign bank or company that is treated as a bank holding company for purposes of this chapter; and

(3) the term "liabilities" means—

(A) with respect to a United States financial company—

(i) the total risk-weighted assets of the financial company, as determined under the risk-based capital rules applicable to bank holding companies, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the financial company under the risk-based capital rules applicable to bank holding companies;

(B) with respect to a foreign-based financial company—

(i) the total risk-weighted assets of the United States operations of the financial company, as determined under the applicable risk-based capital rules, as adjusted to reflect exposures that are deducted from regulatory capital; less

(ii) the total regulatory capital of the United States operations of the financial company, as determined under the applicable risk-based capital rules; and

(C) with respect to an insurance company or other nonbank financial company supervised by the Board, such assets of the company as the Board shall specify by rule, in order to provide for consistent and equitable treatment of such companies.

(b) Concentration limit

Subject to the recommendations by the Council under subsection (e), a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

(c) Exception to concentration limit

With the prior written consent of the Board, the concentration limit under subsection (b) shall not apply to an acquisition—

(1) of a bank in default or in danger of default;

(2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under section 1823(c) of this title; or

(3) that would result only in a de minimis increase in the liabilities of the financial company.

(d) Rulemaking and guidance

The Board shall issue regulations implementing this section in accordance with the recommendations of the Council under subsection (e), including the definition of terms, as necessary. The Board may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general.

(e) Council study and rulemaking

(1) Study and recommendations

Not later than 6 months after July 21, 2010, the Council shall—

(A) complete a study of the extent to which the concentration limit under this section would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States; and

(B) make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement this section.

(2) Rulemaking

Not later than 9 months after the date of completion of the study under paragraph (1), and notwithstanding subsections (b) and (d), the Board shall issue final regulations implementing this section, which shall reflect any recommendations by the Council under paragraph (1)(B).

(May 9, 1956, ch. 240, §14, as added Pub. L. 111–203, title VI, §622, July 21, 2010, 124 Stat. 1632.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (a)(2)(E), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376. Title I of the Act, known as the Financial Stability Act of 2010, is classified principally to subchapter I (§5311 et seq.) of chapter 53 of this title. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

This chapter, referred to in subsec. (a)(2)(F), was in the original "this Act", meaning act May 9, 1956, ch. 240, 70 Stat. 133, known as the Bank Holding Company Act of 1956, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

CHAPTER 18—BANK SERVICE COMPANIES

Sec.

- 1861. Short title and definitions.
- 1862. Amount of investment in bank service company.
- 1863. Permissible bank service company activities for depository institutions.
- 1864. Permissible bank service company activities for other persons.
- 1865. Prior approval for investments in bank service companies.
- 1866. Services to nonstockholders or nonmembers.
- 1867. Regulation and examination of bank service companies.

§1861. Short title and definitions

(a) Short title

This chapter may be cited as the "Bank Service Company Act".

(b) Definitions

For the purpose of this chapter—

(1) the term "appropriate Federal banking agency" shall have the meaning provided in section 1813(q) of this title;

(2) the term "bank service company" means—

(A) any corporation—

(i) which is organized to perform services authorized by this chapter; and

(ii) all of the capital stock of which is owned by 1 or more insured depository institutions;
and

(B) any limited liability company—

(i) which is organized to perform services authorized by this chapter; and

(ii) all of the members of which are 1 or more insured depository institutions.

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "depository institution" means, except when such term appears in connection with the term "insured depository institution", an insured bank, a savings association, a financial institution subject to examination by the appropriate Federal banking agency or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under State law and are eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board;

(5) INSURED DEPOSITORY INSTITUTION.—The terms "depository institution" and "savings association" have the same meanings as in section 1813 of this title;

(6) the term "invest" includes any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment;

(7) the term "limited liability company" means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 1813 of this title) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company;

(8) the term "principal investor" means the insured depository institution that has the largest dollar amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal dollar amounts invested in a bank service company, the company shall, prior to commencing operations, select one of the insured depository institutions as its principal investor and shall notify the depository institution's appropriate Federal banking agency of that choice within 5 business days of its selection; and

(9) the terms "State depository institution", "Federal depository institution", "State savings association" and "Federal savings association" have the same meanings as in section 1813 of this title.

(Pub. L. 87-856, §1, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1540; Pub. L. 97-457, §32(a), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104-208, div. A, title II, §2613(a), (b), Sept. 30, 1996, 110 Stat. 3009-476; Pub. L. 109-351, title VI, §602(b)(1), Oct. 13, 2006, 120 Stat. 1979; Pub. L. 111-203, title III, §357(1), (2), July 21, 2010, 124 Stat. 1547, 1548.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (b)(4). Pub. L. 111-203, §357(1), inserted "a savings association," after "an insured bank," substituted "appropriate Federal banking agency" for "Director of the Office of Thrift Supervision", and struck out ", the Federal Savings and Loan Insurance Corporation," after "Federal Deposit Insurance Corporation".

Subsec. (b)(5). Pub. L. 111-203, §357(2), substituted "terms 'depository institution' and 'savings association' have the same meanings as in section 1813" for "term 'insured depository institution' has the same meaning as in section 1813(c)".

2006—Subsec. (b)(2)(A)(ii), (B)(ii). Pub. L. 109-351, §602(b)(1)(F), substituted "insured depository institutions" for "insured banks".

Subsec. (b)(4). Pub. L. 109-351, §602(b)(1)(A), inserted ", except when such term appears in connection with the term 'insured depository institution'," after "means" and substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

Subsec. (b)(5). Pub. L. 109-351, §602(b)(1)(B), added par. (5) and struck out former par. (5) which defined "insured bank".

Subsec. (b)(8). Pub. L. 109-351, §602(b)(1)(G), substituted "means the insured depository institution" for "means the insured bank", "insured depository institutions" for "insured banks" in two places, and "the depository institution's appropriate" for "the bank's appropriate".

Subsec. (b)(9). Pub. L. 109-351, §602(b)(1)(C)–(E), added par. (9).

1996—Subsec. (a). Pub. L. 104-208, §2613(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "This chapter may be cited as the 'Bank Service Corporation Act'."

Subsec. (b)(2). Pub. L. 104-208, §2613(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the term 'bank service corporation' means a corporation organized to perform services authorized by this chapter, all of the capital stock of which is owned by one or more insured banks;"

Subsec. (b)(6). Pub. L. 104-208, §2613(b)(2), substituted "company" for "corporation" and struck out "and" after semicolon at end.

Subsec. (b)(7). Pub. L. 104-208, §2613(b)(3), added par. (7). Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 104-208, §2613(b)(4), substituted "company" for "corporation" wherever appearing and "equity" for "capital stock".

Pub. L. 104-208, §2613(b)(3), redesignated par. (7) as (8).

1983—Subsec. (b)(4). Pub. L. 97-457 substituted "a" for "or another" after "insured bank," and inserted reference to a financial institution insured by State law and eligible to be insured by certain Federal agencies.

1982—Subsec. (a). Pub. L. 97-320 substituted provision that this chapter may be cited as the "Bank Service Corporation Act" for provision that term "Federal supervisory agency" meant the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Board of Directors of the Federal Deposit Insurance Corporation.

Subsec. (b). Pub. L. 97-320 substituted definitions of "appropriate Federal banking agency", "bank service corporation", "Board", "depository institution", "insured bank", "invest", and "principal investor" for provision that term "bank services" meant services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

Subsec. (c). Pub. L. 97-320 redesignated provisions of subsec. (c) defining "bank service corporation" as (b)(2), and revised definition.

Subsec. (d). Pub. L. 97-320 redesignated provisions of subsec. (d) as (b)(6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

§1862. Amount of investment in bank service company

Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 1464(c)(4)(B) of this title, an insured depository institution may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank service company. No insured depository institution shall invest more than 5 per centum of its total assets in bank service companies.

(Pub. L. 87-856, §2, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1541; Pub. L. 104-208, div. A, title II, §2613(c), Sept. 30, 1996, 110 Stat. 3009-477; Pub. L. 109-351, title VI, §602(a), (b)(2), Oct. 13, 2006, 120 Stat. 1978, 1979.)

EDITORIAL NOTES

AMENDMENTS

2006—Pub. L. 109-351 inserted "or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 1464(c)(4)(B) of this title" after "relating to banks" and substituted "insured depository institution" for "insured bank" in two places.

1996—Pub. L. 104-208 substituted "company" for "corporation" in section catchline and "company" and "companies" for "corporation" and "corporations", respectively, in text.

1982—Pub. L. 97-320 substituted provisions relating to the maximum permissible amount of investment in a bank service corporation by an insured bank for provisions which read as follows:

"(a) No limitation or prohibition otherwise imposed by any provision of Federal law exclusively relating to banks shall prevent any two or more banks from investing not more than 10 per centum of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation.

"(b) If stock in a bank service corporation has been held by two banks, and one of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it."

§1863. Permissible bank service company activities for depository institutions

Without regard to the provisions of sections 1864 and 1865 of this title, an insured depository institution may invest in a bank service company that performs, and a bank service company may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

(Pub. L. 87-856, §3, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1541; Pub. L. 104-208, div. A, title II, §2613(d), Sept. 30, 1996, 110 Stat. 3009-477; Pub. L. 109-351, title VI, §602(a), Oct. 13, 2006, 120 Stat. 1978.)

EDITORIAL NOTES

AMENDMENTS

2006—Pub. L. 109-351 substituted "insured depository institution" for "insured bank".

1996—Pub. L. 104-208 substituted "company" for "corporation" wherever appearing in section catchline and text.

1982—Pub. L. 97-320 substituted provisions relating to permissible bank service corporation activities for depository institutions for provisions that a bank service corporation must provide bank services to a bank that applied for them if the applying bank competed with a bank which held stock in the corporation unless comparable services were available elsewhere at competitive cost or furnishing the services would be beyond the practical capacity of the corporation.

§1864. Permissible bank service company activities for other persons

(a) Services permissible other than taking deposits

A bank service company may provide to any person any service authorized by this section, except that a bank service company shall not take deposits.

(b) Services to be performed in State where shareholders or members are located

Except as permissible under subsection (c), (d), or (e) or with the prior approval of the Board under section 1865(b) of this title in accordance with subsection (f) of this section—

(1) a bank service company shall not perform the services authorized by this section in any State other than that State in which its shareholders or members are located; and

(2) all insured bank shareholders or members of a bank service company shall be located in the same State.

(c) Performance where State bank or savings association is shareholder or member

A bank service company in which a State bank or State savings association is a shareholder or member shall perform only those services that such State bank or State savings association shareholder or member is authorized to perform under the law of the State in which such State bank or State savings association operates and shall perform such services only at locations in the State in which such State bank or State savings association shareholder or member could be authorized to perform such services.

(d) Performance where national bank or Federal savings association is shareholder or member

A bank service company in which a national bank or Federal savings association is a shareholder or member shall perform only those services that such national bank or Federal savings association shareholder or member is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank or Federal savings association shareholder or member could be authorized to perform such services.

(e) Performance where State bank and national bank are shareholders or members

A bank service company may perform—

(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

(2) such services only at locations in a State in which each such shareholder or member is authorized to perform such services.

(f) Geographic location

Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks or savings

associations to the extent that those laws are applicable to an activity authorized by this subsection, a bank service company may perform at any geographic location any service, other than deposit taking, that the Board has determined, by regulation, to be permissible for a bank holding company under section 1843(c)(8) of this title as of the day before November 12, 1999.

(Pub. L. 87–856, §4, Oct. 23, 1962, 76 Stat. 1132; Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 97–457, §32(b)(2), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104–208, div. A, title II, §2613(e), Sept. 30, 1996, 110 Stat. 3009–477; Pub. L. 106–102, title I, §102(b)(2), Nov. 12, 1999, 113 Stat. 1342; Pub. L. 109–351, title VI, §602(b)(3), Oct. 13, 2006, 120 Stat. 1979.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–351, §602(b)(3)(A), inserted "as permissible under subsection (c), (d), or (e) or" after "Except" in introductory provisions.

Subsec. (c). Pub. L. 109–351, §602(b)(3)(B), inserted "or State savings association" after "State bank" wherever appearing.

Subsec. (d). Pub. L. 109–351, §602(b)(3)(C), inserted "or Federal savings association" after "national bank" wherever appearing.

Subsec. (e). Pub. L. 109–351, §602(b)(3)(D), inserted heading and amended text generally. Prior to amendment, text read as follows: "A bank service company that has both national bank and State bank shareholders or members shall perform only those services that may lawfully be performed by both any shareholder or member of the company which is a national bank under the law of the United States and any shareholder or member of the company which is a State bank under the law of the State in which any such State bank operate and shall perform such services only at locations in the State at which both its State bank and national bank shareholders or members could be authorized to perform such services."

Subsec. (f). Pub. L. 109–351, §602(b)(3)(E), inserted "or savings associations" after "location of banks".

1999—Subsec. (f). Pub. L. 106–102 inserted before period at end "as of the day before November 12, 1999".

1996—Pub. L. 104–208, §2613(e)(5), substituted "company" for "corporation" in section catchline.

Subsec. (a). Pub. L. 104–208, §2613(e)(1), substituted "company" for "corporation" in two places.

Subsec. (b). Pub. L. 104–208, §2613(e)(1), (2), inserted "or members" after "shareholders" wherever appearing in text and substituted "company" for "corporation" in two places.

Subsecs. (c), (d). Pub. L. 104–208, §2613(e)(1), (3), inserted "or member" after "shareholder" wherever appearing and substituted "company" for "corporation".

Subsec. (e). Pub. L. 104–208, §2613(e)(1), (4), substituted "company" for "corporation", "any shareholder or member of the company which is a national bank" for "its national bank shareholder or shareholders", "any shareholder or member of the company which is a State bank" for "its State bank shareholder or shareholders", and "any such State bank" for "such State bank or banks", and inserted "or members" after "national bank and State bank shareholders" and after "State bank and national bank shareholders".

Subsec. (f). Pub. L. 104–208, §2613(e)(1), substituted "company" for "corporation".

1983—Subsecs. (d), (e). Pub. L. 97–457 substituted "under the law of the United States" for "under this chapter".

1982—Pub. L. 97–320 substituted provisions relating to bank service corporation activities for other persons for provisions which read: "No bank service corporation may engage in any activity other than the performance of bank services for banks."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

§1865. Prior approval for investments in bank service companies

(a) Approval of Federal banking agency

No insured depository institution shall invest in the capital stock of a bank service company that performs any service under authority of subsection (c), (d), or (e) of section 1864 of this title without prior notice, as determined by the appropriate Federal banking agency for the insured depository institution.

(b) Approval of Board

No insured depository institution shall invest in the capital stock of a bank service company that performs any service authorized only under authority of section 1864(f) of this title and no bank service company shall perform any activity authorized only under section 1864(f) of this title without the prior approval of the Board.

(c) Considerations in determining approval

In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of any insured depository institution and bank service company involved, including the financial capability of the insured depository institution to make a proposed investment under this chapter, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

(d) Failure to act on application for approval

In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

(Pub. L. 87-856, §5, Oct. 23, 1962, 76 Stat. 1133; Pub. L. 95-630, title III, §308, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 103-325, title III, §323, Sept. 23, 1994, 108 Stat. 2227; Pub. L. 104-208, div. A, title II, §2613(f), Sept. 30, 1996, 110 Stat. 3009-478; Pub. L. 109-351, title VI, §602(b)(4), Oct. 13, 2006, 120 Stat. 1980.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-351, §602(b)(4)(A), substituted "insured depository institution" for "insured bank", struck out "bank's" before "appropriate Federal banking agency", and inserted "for the insured depository institution" before period at end.

Subsec. (b). Pub. L. 109-351, §602(b)(4)(B), substituted "insured depository institution" for "insured bank" and inserted "authorized only" after "performs any service" and "perform any activity".

Subsec. (c). Pub. L. 109-351, §602(b)(4)(C), substituted "any insured depository institution" for "the bank or banks" and "capability of the insured depository institution" for "capability of the bank".

1996—Pub. L. 104-208 substituted "companies" for "corporations" in section catchline and "company" for "corporation" wherever appearing in text.

1994—Subsec. (a). Pub. L. 103-325, §323(1), substituted "prior notice, as determined by" for "the prior approval of".

Subsec. (c). Pub. L. 103-325, §323(2), inserted "or whether to approve or disapprove any notice" after "approval".

1982—Pub. L. 97-320 substituted provisions relating to prior approval for investments in bank service corporations for provisions relating to regulation and examination of bank services for a regularly examined bank or its subsidiary or affiliate whether performed on or off its premises. See section 1867(c) of this title.

1978—Pub. L. 95-630 among other changes, substituted provisions requiring banks regularly examined by a Federal supervisory agency, which cause to be performed, by contract or otherwise, any bank service for itself, to notify such supervisory agency of the existence of a service relationship within 30 days after making such service contract or performance of service, whichever occurs first for provisions requiring that no bank subject to examination by a Federal supervisory agency may cause to be performed, by contract or otherwise, any bank service for itself unless satisfactory assurances are furnished to such supervisory agency by both the bank and the party performing such services that the performances thereof will be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

§1866. Services to nonstockholders or nonmembers

No bank service company shall unreasonably discriminate in the provision of any services authorized under this chapter to any depository institution that does not own stock in or is not a member of the service company on the basis of the fact that such depository institution is in competition with an institution that owns stock in or is a member of the bank service company, except that—

(1) it shall not be considered unreasonable discrimination for a bank service company to provide services to a nonstockholding or nonmember institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(2) a bank service company may refuse to provide services to a nonstockholding or nonmember institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service company.

(Pub. L. 87–856, §6, Oct. 23, 1962, as added Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1543; amended Pub. L. 104–208, div. A, title II, §2613(g), Sept. 30, 1996, 110 Stat. 3009–478.)

EDITORIAL NOTES

AMENDMENTS

1996—Pub. L. 104–208, §2613(g)(1)–(4), (6), in section catchline, inserted "or nonmembers" after "nonstockholders", and in introductory provisions of text, substituted "company" for "corporation" wherever appearing and "such depository institution" for "the nonstockholding institution" and inserted "or is not a member of" after "does not own stock in" and "or is a member of" after "that owns stock in".

Pars. (1), (2). Pub. L. 104–208, §2613(g)(1), (5), substituted "company" for "corporation" wherever appearing and inserted "or nonmember" after "nonstockholding".

§1867. Regulation and examination of bank service companies

(a) Principal investor

A bank service company shall be subject to examination and regulation by the appropriate Federal banking agency of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder or principal member of such a bank service company may authorize any other Federal banking agency that supervises any other shareholder or member of the bank service company to make such an examination.

(b) Applicability of section 1818 of this title

A bank service company shall be subject to the provisions of section 1818 of this title as if the bank service company were an insured depository institution. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service company.

(c) Services performed by contract or otherwise

Notwithstanding subsection (a) of this section, whenever a depository institution that is regularly examined by an appropriate Federal banking agency, or any subsidiary or affiliate of such a depository institution that is subject to examination by that agency, causes to be performed for itself,

by contract or otherwise, any services authorized under this chapter, whether on or off its premises—

(1) such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by the depository institution itself on its own premises, and

(2) the depository institution shall notify each such agency of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first.

(d) Issuance of regulations and orders

The Board and the appropriate Federal banking agencies are authorized to issue such regulations and orders as may be necessary to enable them to administer and to carry out the purposes of this chapter and to prevent evasions thereof.

(Pub. L. 87–856, §7, Oct. 23, 1962, as added Pub. L. 97–320, title VII, §709, Oct. 15, 1982, 96 Stat. 1543; amended Pub. L. 97–457, §32(b)(1), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104–208, div. A, title II, §2613(h), Sept. 30, 1996, 110 Stat. 3009–478; Pub. L. 109–351, title VI, §602(b)(5), Oct. 13, 2006, 120 Stat. 1980; Pub. L. 111–203, title III, §357(3), July 21, 2010, 124 Stat. 1548.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–203 inserted "each" after "notify".

2006—Subsec. (b). Pub. L. 109–351, §602(b)(5)(A), substituted "insured depository institution" for "insured bank".

Subsec. (c). Pub. L. 109–351, §602(b)(5)(B), substituted "a depository institution" for "a bank" in two places in introductory provisions and "the depository institution" for "the bank" in pars. (1) and (2).

1996—Pub. L. 104–208, §2613(h)(3), substituted "companies" for "corporations" in section catchline.

Subsec. (a). Pub. L. 104–208, §2613(h)(1), (2), substituted "company" for "corporation" wherever appearing and inserted "or principal member" after "principal shareholder" and "or member" after "other shareholder".

Subsec. (b). Pub. L. 104–208, §2613(h)(1), substituted "company" for "corporation" wherever appearing.

1983—Subsec. (b). Pub. L. 97–457 substituted reference to section 1818 of this title for reference to the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1818(b) et seq.).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

CHAPTER 19—SECURITY MEASURES FOR BANKS AND SAVINGS ASSOCIATIONS

Sec.

1881. "Federal supervisory agency" defined.

1882. Security measures.

1883. Insurance rates; report to Congress.

1884. Penalties for violations.

§1881. "Federal supervisory agency" defined

As used in this chapter the term "Federal supervisory agency" means the appropriate Federal banking agency, as defined in section 1813(q) of this title.

(Pub. L. 90–389, §2, July 7, 1968, 82 Stat. 294; Pub. L. 101–73, title VII, §744(h), Aug. 9, 1989, 103

Stat. 439; Pub. L. 108–386, §8(d), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 111–203, title III, §356(1), July 21, 2010, 124 Stat. 1547.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "the term 'Federal supervisory agency' means the appropriate Federal banking agency, as defined in section 1813(q) of this title." for "the term 'Federal supervisory agency' means—

"(1) The Comptroller of the Currency with respect to national banks,

"(2) The Board of Governors of the Federal Reserve System with respect to Federal Reserve banks and State banks which are members of the Federal Reserve System,

"(3) The Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations, and

"(4) The Director of the Office of Thrift Supervision with respect to Federal savings."

2004—Par. (1). Pub. L. 108–386 struck out "and district banks" after "national banks".

1989—Par. (3). Pub. L. 101–73, §744(h)(2), inserted reference to State savings associations.

Par. (4). Pub. L. 101–73, §744(h)(1), substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board", struck out "and loan" after "Federal savings", and struck out "associations, and institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation" before period at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

SHORT TITLE

Pub. L. 90–389, §1, July 7, 1968, 82 Stat. 294, provided: "That this Act [enacting this chapter and amending section 1729 of this title] may be cited as the 'Bank Protection Act of 1968'."

§1882. Security measures

(a) Rules for installation, maintenance, and operation of security devices and procedures

Within six months from July 7, 1968, each Federal supervisory agency shall promulgate rules establishing minimum standards with which each bank or savings association must comply with respect to the installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts.

(b) Time for compliance with standards

The rules shall establish the time limits within which banks and savings associations shall comply with the standards.

(Pub. L. 90–389, §3, July 7, 1968, 82 Stat. 295; Pub. L. 101–73, title IX, §911(a), Aug. 9, 1989, 103 Stat. 478; Pub. L. 111–203, title III, §356(2), July 21, 2010, 124 Stat. 1547.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 struck out "and loan" after "savings" in subsecs. (a) and (b).

1989—Subsec. (b). Pub. L. 101–73 struck out "and shall require the submission of periodic reports with respect to the installation, maintenance, and operation of security devices and procedures" before period at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

§1883. Insurance rates; report to Congress

The Federal supervisory agencies shall consult with

- (1) insurers furnishing insurance protection against losses resulting from robberies, burglaries, and larcenies committed against financial institutions referred to in section 1881 of this title, and
- (2) State agencies having supervisory or regulatory responsibilities with respect to such insurers

to determine the feasibility and desirability of premium rate differentials based on the installation, maintenance, and operation of security devices and procedures. The Federal supervisory agencies shall report to the Congress the results of their consultations pursuant to this section not later than two years after July 7, 1968.

(Pub. L. 90–389, §4, July 7, 1968, 82 Stat. 295.)

§1884. Penalties for violations

A bank or savings association which violates a rule promulgated pursuant to this chapter shall be subject to a civil penalty which shall not exceed \$100 for each day of the violation.

(Pub. L. 90–389, §5, July 7, 1968, 82 Stat. 295; Pub. L. 111–203, title III, §356(3), July 21, 2010, 124 Stat. 1547.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 struck out "and loan" after "savings".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

CHAPTER 20—CREDIT CONTROL

§§1901 to 1910. Omitted

EDITORIAL NOTES

CODIFICATION

Sections 1901 to 1910 were omitted pursuant to section 1910 which provided that the authority conferred by this chapter expired at the close of June 30, 1982.

Section 1901, Pub. L. 91-151, title II, §202, Dec. 23, 1969, 83 Stat. 376, related to definitions for this chapter.

Pub. L. 91-151, title II, §201, Dec. 23, 1969, 83 Stat. 376, provided that title II of Pub. L. 91-151 (this chapter) could be cited as the "Credit Control Act".

Section 1902, Pub. L. 91-151, title II, §203, Dec. 23, 1969, 83 Stat. 376, directed Board of Governors of Federal Reserve System to prescribe regulations to carry out purposes of this chapter.

Section 1903, Pub. L. 91-151, title II, §204, Dec. 23, 1969, 83 Stat. 377, related to determination of interest charges in connection with credit transactions.

Section 1904, Pub. L. 91-151, title II, §205, Dec. 23, 1969, 83 Stat. 377, related to credit controls.

Section 1905, Pub. L. 91-151, title II, §206, Dec. 23, 1969, 83 Stat. 377, related to extent of controls.

Section 1906, Pub. L. 91-151, title II, §207, Dec. 23, 1969, 83 Stat. 378, related to reporting of extensions of credit and production of records.

Section 1907, Pub. L. 91-151, title II, §208, Dec. 23, 1969, 83 Stat. 378, related to injunctions for noncompliance.

Section 1908, Pub. L. 91-151, title II, §209, Dec. 23, 1969, 83 Stat. 378, related to civil penalties.

Section 1909, Pub. L. 91-151, title II, §210, Dec. 23, 1969, 83 Stat. 378, related to criminal penalties.

Section 1910, Pub. L. 91-151, title II, §211, as added Pub. L. 96-508, §9, Dec. 8, 1980, 94 Stat. 2749, provided that the authority conferred by this chapter expired at the close of June 30, 1982.

STATUTORY NOTES AND RELATED SUBSIDIARIES

COUNCIL ON WAGE AND PRICE STABILITY

Pub. L. 93-387, Aug. 24, 1974, 88 Stat. 750, as amended by Pub. L. 93-449, §4(e), Oct. 18, 1974, 88 Stat. 1367; Pub. L. 94-78, §§2-7, Aug. 9, 1975, 89 Stat. 411, 412; Pub. L. 95-121, §§1-6, Oct. 6, 1977, 91 Stat. 1091; Pub. L. 96-10, §§1-5, May 10, 1979, 96 Stat. 23; Pub. L. 96-508, §§1-8, Dec. 8, 1980, 94 Stat. 2748, 2749; Pub. L. 97-35, title III, §383, Aug. 13, 1981, 95 Stat. 432, known as the "Council on Wage and Price Stability Act", provided for the establishment of a Council on Wage and Price Stability and the appointment and compensation of members, chairman, director, and employees; authorized cooperation with other agencies; specified the powers and duties of the Council; directed the establishment and duties of an Office of Productivity; specified that the Act did not authorize the continuation or imposition of economic controls or affect the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 751 et seq.); provided for the disclosure of information; required annual reports; authorized appropriations; and terminated the authority granted by the Act on Sept. 30, 1981.

ECONOMIC STABILIZATION PROGRAM

Pub. L. 91-379, title II, Aug. 15, 1970, 84 Stat. 799, as amended by Pub. L. 91-558, title II, §201, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 92-8, §2, Mar. 31, 1971, 85 Stat. 13; Pub. L. 92-15, §3, May 18, 1971, 85 Stat. 38; Pub. L. 92-210, §2, Dec. 22, 1971, 85 Stat. 743; Pub. L. 93-28, §§1-8, Apr. 30, 1973, 87 Stat. 27-29; Pub. L. 102-572, title I, §102(a), Oct. 29, 1992, 106 Stat. 4506, known as the "Economic Stabilization Act of 1970", authorized the President, within an established procedural framework, to stabilize prices, rents, wages, salaries, interest rates, dividends and similar transfers, and establish priorities for use and allocation of supplies of petroleum products, including crude oil, and to issue standards to serve as a guide for determining levels of wages, prices, etc., which would allow for adjustments, exceptions and variations to prevent inequities, taking into account changes in productivity, cost of living and other pertinent factors. The Act provided for limitations on the exercise of Presidential authority and allowed delegation of the performance of any of the President's functions to appropriate officers, departments and agencies of the United States or to entities composed of members appointed to represent different sectors of the economy and the general public. The Act provided for disclosure of information, subpoena power, administrative procedure, criminal and civil sanctions, injunctions and suits for damages and other relief. The Act specified original jurisdiction for judicial review of cases or controversies arising under the Act or regulations issued thereunder in the district

courts of the United States, and directed that appeals of final decisions or permitted interlocutory appeals be brought in the United States Court of Appeals for the Federal Circuit. The Act made specific provision for small business and mass transportation systems, required the President to issue periodic reports to Congress, authorized appropriations, and provided for its expiration on April 30, 1974.

EXEMPTION FROM PRICE RESTRAINTS AND ALLOCATION PROGRAMS OF FIRST SALE OF CRUDE OIL AND NATURAL GAS OF CERTAIN LEASES

Pub. L. 93-153, title IV, §406, Nov. 16, 1973, 87 Stat. 590, provided that the first sale of crude oil and natural gas liquids produced from any lease whose average daily production did not exceed ten barrels per well not be subject to price restraints or any allocation program established pursuant to any Federal law, prior to repeal by Pub. L. 94-163, title IV, §401(b)(4), Dec. 22, 1975, 89 Stat. 946. For effective date of repeal of section 406 of Pub. L. 93-153, see section 401(b)(5) of Pub. L. 94-163.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12288. TERMINATION OF WAGE AND PRICE REGULATORY PROGRAM

Ex. Ord. No. 12288, Jan. 29, 1981, 46 F.R. 10135, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces by the Constitution and laws of the United States of America, including Sections 2(c) and 3(a) of the Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904 note), and Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)) [now 40 U.S.C. 121(a)], and in order to terminate the regulatory burdens of the current wage and price program, it is hereby ordered as follows:

SECTION 1. Executive Order No. 12092, as amended, is revoked.

SEC. 2. The head of each Executive agency and military department, including the Council on Wage and Price Stability and the Office of Federal Procurement Policy, is authorized to take appropriate steps to terminate actions adopted in response to Executive Order No. 12092, as amended.

RONALD REAGAN.

CHAPTER 21—FINANCIAL RECORDKEEPING

Sec.

- 1951. Congressional findings and declaration of purpose.
- 1952. Reports on ownership and control.
- 1953. Recordkeeping and procedures.
- 1954. Injunctions.
- 1955. Civil penalties.
- 1956. Criminal penalty.
- 1957. Additional criminal penalty in certain cases.
- 1958. Compliance.
- 1959. Administrative procedure.
- 1960. Safe harbor with respect to keep open directives.

§1951. Congressional findings and declaration of purpose

(a) The Congress finds that certain records maintained by businesses engaged in the functions described in section 1953(b) of this title have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and managements of types of financial institutions referred to in section 1952 of this title may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(Pub. L. 91-508, title I, §121, Oct. 26, 1970, 84 Stat. 1116.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 91–508, title IV, §401(a), (b), Oct. 26, 1970, 84 Stat. 1125, provided that:

"(a) Except as otherwise provided in this section, titles I, II, and III of this Act and the amendments made thereby [enacting this chapter and sections 1730d and 1829b of this title and section 1051 et seq. of former Title 31, Money and Finance, amending section 78g of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 78g of Title 15 and section 1051 of former Title 31] take effect on the first day of the seventh calendar month which begins after the date of enactment [Oct. 26, 1970].

"(b) The Secretary of the Treasury may by regulation provide that any provision of title I or II or any amendment made thereby [enacting this chapter and sections 1730d and 1829b of this title] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970]."

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–156, §1, Aug. 8, 2014, 128 Stat. 1829, provided that: "This Act [amending section 1958 of this title and section 5318 of Title 31, Money and Finance, and enacting provisions set out as a note under section 1958 of this title] may be cited as the 'Money Remittances Improvement Act of 2014'."

SHORT TITLE

Title I of Pub. L. 91–508, title II of Pub. L. 91–508, titles I and II of Pub. L. 91–508, and subchapter II of chapter 53 of Title 31, Money and Finance, have each been popularly known as the "Bank Secrecy Act". Title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1114, as amended, enacted this chapter, former section 1730d of this title, and section 1829b of this title. Title II of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1118, as amended, also known as the Currency and Foreign Transactions Reporting Act, enacted chapter 21 (§1051 et seq.) of former Title 31, Money and Finance, which was repealed and reenacted as subchapter II of chapter 53 of Title 31, Money and Finance, by Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31. For complete classification of Pub. L. 91–508 to the Code, see Tables.

§1952. Reports on ownership and control

Where the Secretary determines that the making of appropriate reports by uninsured banks or uninsured institutions of any type with respect to their ownership, control, and managements and any changes therein has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such banks or institutions to make such reports as he determines in respect of such ownership, control, and managements and changes therein.

(Pub. L. 91–508, title I, §122, Oct. 26, 1970, 84 Stat. 1116.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

§1953. Recordkeeping and procedures

(a) Regulations

If the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b), has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and that, given the threat posed to the

security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, he may by regulation require such bank, institution, or person—

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b), any records or evidence of any type which the Secretary is authorized under section 1829b of this title to require insured banks to require, retain, or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under this paragraph occurs with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

(b) Institutions subject to recordkeeping requirements

The authority of the Secretary of the Treasury under subsection (a) extends to any financial institution (as defined in section 5312(a)(2) of title 31), other than any insured bank (as defined in section 1813(h) of this title) and any insured institution (as defined in section 1724(a) ¹ of this title), and any partner, officer, director, or employee of any such financial institution.

(c) Acceptance of automated records

The Secretary shall permit an uninsured bank or financial institution to retain or maintain records referred to in subsection (a) in electronic or automated form, subject to terms and conditions established by the Secretary.

(Pub. L. 91–508, title I, §123, Oct. 26, 1970, 84 Stat. 1116; Pub. L. 100–690, title VI, §6185(d)(3)(A), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 103–325, title III, §310, Sept. 23, 1994, 108 Stat. 2221; Pub. L. 107–56, title III, §358(e), Oct. 26, 2001, 115 Stat. 327; Pub. L. 108–458, title VI, §6202(k), Dec. 17, 2004, 118 Stat. 3746.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1724 of this title, referred to in subsec. (b), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–458 made technical correction to Pub. L. 107–56. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107–56, as amended by Pub. L. 108–458, amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "Where the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) of this section, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such bank, institution, or person—".

1994—Subsec. (c). Pub. L. 103–325 added subsec. (c).

1988—Subsec. (b). Pub. L. 100–690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The authority of the Secretary under this section extends to any person engaging in the business of carrying on any of the following functions:

"(1) Issuing or redeeming checks, money orders, travelers' checks, or similar instruments, except as an incident to the conduct of its own nonfinancial business.

"(2) Transferring funds or credits domestically or internationally.

"(3) Operating a currency exchange or otherwise dealing in foreign currencies or credits.

"(4) Operating a credit card system.

"(5) Performing such similar, related, or substitute functions for any of the foregoing or for banking as may be specified by the Secretary in regulations."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–458 effective as if included in Pub. L. 107–56, as of the date of enactment of such Act, and no amendment made by Pub. L. 107–56 that is inconsistent with such amendment to be deemed to have taken effect, see section 6205 of Pub. L. 108–458, set out as a note under section 1828 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–56 applicable with respect to reports filed or records maintained on, before, or after Oct. 26, 2001, see section 358(h) of Pub. L. 107–56, set out as a note under section 1829b of this title.

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

¹ [See References in Text note below.](#)

§1954. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this chapter, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Secretary under this chapter.

(Pub. L. 91–508, title I, §124, Oct. 26, 1970, 84 Stat. 1117.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

§1955. Civil penalties

(a) For each willful or grossly negligent violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, or any person willfully causing a violation of the regulation, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully or through gross negligence participates in the violation, a civil penalty not exceeding \$10,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

(Pub. L. 91–508, title I, §125, Oct. 26, 1970, 84 Stat. 1117; Pub. L. 100–690, title VI, §6185(d)(3)(B), Nov. 18, 1988, 102 Stat. 4357; Pub. L. 102–550, title XV, §1535(c)(1), Oct. 28,

1992, 106 Stat. 4067.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 inserted "or any person willfully causing a violation of the regulation," after "applies,".

1988—Subsec. (a). Pub. L. 100–690 inserted "or grossly negligent" after "willful" and "or through gross negligence" after "willfully" and substituted "\$10,000" for "\$1,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

§1956. Criminal penalty

Whoever willfully violates any regulation under this chapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Pub. L. 91–508, title I, §126, Oct. 26, 1970, 84 Stat. 1118.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

§1957. Additional criminal penalty in certain cases

Whoever willfully violates, or willfully causes a violation of any regulation under this chapter, section 1829b of this title, or section 1730d ¹ of this title, where the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(Pub. L. 91–508, title I, §127, Oct. 26, 1970, 84 Stat. 1118; Pub. L. 102–550, title XV, §1535(c)(2), Oct. 28, 1992, 106 Stat. 4067.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1992—Pub. L. 102–550 inserted ", or willfully causes a violation of" after "Whoever willfully violates".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91-508, set out as a note under section 1951 of this title.

¹ [*See References in Text note below.*](#)

§1958. Compliance

The Secretary shall have the responsibility to assure compliance with the requirements of this chapter and section 1829b of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency. The Secretary may rely on examinations conducted by a State supervisory agency of a category of financial institution, if the Secretary determines that the category of financial institution is required to comply with this chapter and section 1829b of this title (and regulations prescribed under this chapter and section 1829b of this title), or the State supervisory agency examines the category of financial institution for compliance with this chapter and section 1829b of this title (and regulations prescribed under this chapter and section 1829b of this title).

(Pub. L. 91-508, title I, §128, Oct. 26, 1970, 84 Stat. 1118; Pub. L. 113-156, §2(b), Aug. 8, 2014, 128 Stat. 1829.)

EDITORIAL NOTES

AMENDMENTS

2014—Pub. L. 113-156 substituted "requirements of this chapter and section 1829b of this title" for "requirements of this chapter and sections 1730d and 1829b of this title" and inserted at end "The Secretary may rely on examinations conducted by a State supervisory agency of a category of financial institution, if the Secretary determines that the category of financial institution is required to comply with this chapter and section 1829b of this title (and regulations prescribed under this chapter and section 1829b of this title), or the State supervisory agency examines the category of financial institution for compliance with this chapter and section 1829b of this title (and regulations prescribed under this chapter and section 1829b of this title)."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91-508, set out as a note under section 1951 of this title.

CONSULTATION WITH STATE AGENCIES

Pub. L. 113-156, §2(c), Aug. 8, 2014, 128 Stat. 1830, provided that: "In issuing rules to carry out section 5318(a)(6) of title 31, United States Code, and section 128 of Public Law 91-508 (12 U.S.C. 1958), the Secretary of the Treasury shall consult with State supervisory agencies."

§1959. Administrative procedure

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5 shall apply to all proceedings under this chapter, section 1829b of this title, and

section 1730d ¹ of this title.

(Pub. L. 91–508, title I, §129, Oct. 26, 1970, 84 Stat. 1118.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1730d of this title, referred to in text, was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

¹ [*See References in Text note below.*](#)

§1960. Safe harbor with respect to keep open directives

(a) Definition

In this section, the term "financial institution" means an entity to which section 1953(b) of this title applies.

(b) Safe harbor

With respect to a customer account or customer transaction of a financial institution, if a Federal law enforcement agency, after notifying FinCEN of the intent to submit a written request to the financial institution that the financial institution keep that account or transaction open (referred to in this section as a "keep open request"), or if a State, Tribal, or local law enforcement agency with the concurrence of FinCEN submits a keep open request—

(1) the financial institution shall not be liable under this chapter for maintaining that account or transaction consistent with the parameters and timing of the request; and

(2) no Federal or State department or agency may take any adverse supervisory action under this chapter with respect to the financial institution solely for maintaining that account or transaction consistent with the parameters of the request.

(c) Rule of construction

Nothing in this section may be construed—

(1) to prevent a Federal or State department or agency from verifying the validity of a keep open request submitted under subsection (b) with the law enforcement agency submitting that request;

(2) to relieve a financial institution from complying with any reporting requirements, including the reporting of suspicious transactions under section 5318(g) of title 31; or

(3) to extend the safe harbor described in subsection (b) to any actions taken by the financial institution—

(A) before the date of the keep open request to maintain a customer account; or

(B) after the termination date stated in the keep open request.

(d) Letter termination date

For the purposes of this section, any keep open request submitted under subsection (b) shall include a termination date after which that request shall no longer apply.

(e) Record keeping

Any Federal, State, Tribal, or local law enforcement agency that submits to a financial institution a keep open request shall, not later than 2 business days after the date on which the request is submitted to the financial institution—

(1) submit to FinCEN a copy of the request; and

(2) alert FinCEN as to whether the financial institution has implemented the request.

(Pub. L. 91–508, title I, §130, as added Pub. L. 116–283, div. F, title LXIII, §6306(a)(2), Jan. 1, 2021, 134 Stat. 4588.)

CHAPTER 22—TYING ARRANGEMENTS

Sec.

1971. Definitions.

1972. Certain tying arrangements prohibited; correspondent accounts.

1973. Jurisdiction of courts; duty of United States attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpoenas.

1974. Actions by United States; subpoenas for witnesses.

1975. Civil actions by persons injured; jurisdiction and venue; amount of recovery.

1976. Injunctive relief for persons against threatened loss or damages; equitable proceedings; preliminary injunctions.

1977. Limitation of actions; suspension of limitations.

1978. Actions under other Federal or State laws unaffected; regulations or orders barred as a defense.

§1971. Definitions

As used in this chapter, the terms "bank", "bank holding company", "subsidiary", and "Board" have the meaning ascribed to such terms in section 1841 of this title. For purposes of this chapter only, the term "company", as used in section 1841 of this title, means any person, estate, trust, partnership, corporation, association, or similar organization, but does not include any corporation the majority of the shares of which are owned by the United States or by any State. The term "trust service" means any service customarily performed by a bank trust department. For purposes of this chapter, a financial subsidiary of a national bank engaging in activities pursuant to section 24a(a) of this title shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank.

(Pub. L. 91–607, title I, §106(a), Dec. 31, 1970, 84 Stat. 1766; Pub. L. 106–102, title I, §121(c), Nov. 12, 1999, 113 Stat. 1380.)

EDITORIAL NOTES

AMENDMENTS

1999—Pub. L. 106–102 inserted at end "For purposes of this chapter, a financial subsidiary of a national bank engaging in activities pursuant to section 24a(a) of this title shall be deemed to be a subsidiary of a bank holding company, and not a subsidiary of a bank."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

§1972. Certain tying arrangements prohibited; correspondent accounts

(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may by regulation or order permit such exceptions to the foregoing prohibition and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title as it considers will not be contrary to the purposes of this chapter.

(2)(A) No bank which maintains a correspondent account in the name of another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(B) No bank shall open a correspondent account at another bank while such bank has outstanding an extension of credit to an executive officer or director of, or other person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, the bank desiring to open the account or to any related interest of such person, unless such extension of credit was made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(C) No bank which maintains a correspondent account at another bank shall make an extension of credit to an executive officer or director of, or to any person who directly or indirectly acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, such other bank or to any related interest of such person, unless such extension of credit is made on substantially the same terms, including interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(D) No bank which has outstanding an extension of credit to an executive officer or director of, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of, another bank or to any related interest of such person shall open a correspondent account at such other bank, unless such extension of credit was made on substantially the same terms, including

interest rates and collateral as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(E) For purposes of this paragraph, the term "extension of credit" shall have the meaning prescribed by the Board pursuant to section 375b of this title, and the term "executive officer" shall have the same meaning given it under section 375a of this title.

(F) CIVIL MONEY PENALTY.—

(i) FIRST TIER.—Any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who, violates any provision of this paragraph shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

(ii) SECOND TIER.—Notwithstanding clause (i), any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who—

(I)(aa) commits any violation described in clause (i);

(bb) recklessly engages in an unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty;

(II) which violation, practice, or breach—

(aa) is part of a pattern of misconduct;

(bb) causes or is likely to cause more than a minimal loss to such bank; or

(cc) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

(iii) THIRD TIER.—Notwithstanding clauses (i) and (ii), any bank which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such bank who—

(I) knowingly—

(aa) commits any violation described in clause (i);

(bb) engages in any unsafe or unsound practice in conducting the affairs of such bank; or

(cc) breaches any fiduciary duty; and

(II) knowingly or recklessly causes a substantial loss to such bank or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under clause (iv) for each day during which such violation, practice, or breach continues.

(iv) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN CLAUSE (iii).—The maximum daily amount of any civil penalty which may be assessed pursuant to clause (iii) for any violation, practice, or breach described in such clause is—

(I) in the case of any person other than a bank, an amount not to exceed \$1,000,000; and

(II) in the case of a bank, an amount not to exceed the lesser of—

(aa) \$1,000,000; or

(bb) 1 percent of the total assets of such bank.

(v) ASSESSMENT; ETC.—Any penalty imposed under clause (i), (ii), or (iii) may be assessed and collected—

(I) in the case of a national bank, by the Comptroller of the Currency;

(II) in the case of a State member bank, by the Board; and

(III) in the case of an insured nonmember State bank, by the Federal Deposit Insurance Corporation,

in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(vi) **HEARING.**—The bank or other person against whom any penalty is assessed under this subparagraph shall be afforded an agency hearing if such bank or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subparagraph.

(vii) **DISBURSEMENT.**—All penalties collected under authority of this subsection shall be deposited into the Treasury.

(viii) **"VIOLATE" DEFINED.**—For purposes of this paragraph, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(ix) **REGULATIONS.**—The Comptroller of the Currency, the Board, and the Federal Deposit Insurance Corporation shall prescribe regulations establishing such procedures as may be necessary to carry out this subparagraph.

(G) For the purpose of this paragraph—

(i) the term "bank" includes a mutual savings bank, a savings bank, and a savings association (as those terms are defined in section 1813 of this title);

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 375b of this title.

(H) **NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.**—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after August 9, 1989).

(Pub. L. 91–607, title I, §106(b), Dec. 31, 1970, 84 Stat. 1766; Pub. L. 95–630, title VIII, §801, Nov. 10, 1978, 92 Stat. 3690; Pub. L. 97–320, title IV, §§410(f), 424(c), (d)(11), (e), 428, Oct. 15, 1982, 96 Stat. 1520, 1523, 1526; Pub. L. 101–73, title IX, §§905(h), 907(i), Aug. 9, 1989, 103 Stat. 461, 473; Pub. L. 102–242, title III, §306(j), Dec. 19, 1991, 105 Stat. 2359; Pub. L. 104–208, div. A, title II, §2216(a), Sept. 30, 1996, 110 Stat. 3009–413; Pub. L. 109–351, title VI, §601(b), Oct. 13, 2006, 120 Stat. 1978; Pub. L. 111–203, title III, §355, July 21, 2010, 124 Stat. 1547.)

EDITORIAL NOTES

AMENDMENTS

2010—Par. (1). Pub. L. 111–203 inserted "issue such regulations as are necessary to carry out this section, and, in consultation with the Comptroller of the Currency and the Federal Deposit Insurance Company, may" after "The Board may" in concluding provisions.

2006—Par. (2)(G) to (I). Pub. L. 109–351 redesignated subpars. (H) and (I) as (G) and (H), respectively, and struck out former subpar. (G) which related to written reporting requirements relating to bank loans to executive officers or stockholders with power to vote more than 10 per centum of any class of voting securities of an insured bank.

1996—Par. (1). Pub. L. 104–208, in concluding provisions, inserted "and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title" after "prohibition".

1991—Par. (2)(H)(i). Pub. L. 102–242 inserted before semicolon at end ", a savings bank, and a savings

association (as those terms are defined in section 1813 of this title)".

1989—Par. (2)(F). Pub. L. 101–73, §907(i), amended subpar. (F) generally, revising and restating as cls. (i) to (ix) provisions of former cls. (i) to (vii).

Par. (2)(I). Pub. L. 101–73, §905(h), added subpar. (I).

1982—Par. (2)(A) to (D). Pub. L. 97–320, §428(a)(1)–(4), inserted "or to any related interest of such person" after "such other bank" in subpar. (A), "desiring to open the account" in subpar. (B), "such other bank" in subpar. (C), and "another bank" in subpar. (D).

Par. (2)(E). Pub. L. 97–320, §410(f), substituted "the meaning prescribed by the Board pursuant to section 375b of this title" for "the same meaning given it in section 371c of this title".

Par. (2)(F)(i). Pub. L. 97–320, §424(c), (d)(11), inserted proviso giving agency discretionary authority to compromise, etc., any civil money penalty imposed under such authority, and substituted "may be assessed" for "shall be assessed".

Par. (2)(F)(iv). Pub. L. 97–320, §424(e), substituted "twenty days from the service" for "ten days from the date".

Par. (2)(G)(ii). Pub. L. 97–320, §428(b)(1), substituted "(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons." for "(ii) Each insured bank shall compile the reports filed pursuant to subparagraph (G)(i) and forward such compilation to the Comptroller of the Currency in the case of a national bank, the Board in the case of a State member bank, and the Federal Deposit Insurance Corporation in the case of an insured nonmember State bank."

Par. (2)(G)(iii). Pub. L. 97–320, §428(b)(2), struck out cl. (iii) which required insured banks to include in their section 1817(k)(1) report a list of names of executive officers or stockholders of record owning, controlling, or having more than a 10 per centum voting control of any class of voting securities of the bank who file information required by subpar. (G)(i) and aggregate amount of extensions of credit by correspondent banks to such executive officers or stockholders of record, any company controlled by such persons, and any political or campaign committee the funds or services of which will benefit such persons, or which is controlled by such persons.

Par. (2)(H). Pub. L. 97–320, §428(c), added subpar. (H).

1978—Pub. L. 95–630 designated existing provisions as par. (1), redesignated former pars. (1) to (5) as subpars. (A) to (E), and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–242 effective upon earlier of date on which final regulations under section 306(m)(1) of Pub. L. 102–242 become effective or 150 days after Dec. 19, 1991, see section 306(l) of Pub. L. 102–242, set out as a note under section 375b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(i) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of \$5,000 and \$25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(l) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 428(b) of Pub. L. 97–320 effective when regulations referred to in the amendment become effective as provided in section 430 of Pub. L. 97–320, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of

Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

§1973. Jurisdiction of courts; duty of United States attorneys; equitable proceedings; petition; expedition of cases; temporary restraining orders; bringing in additional parties; subpoenas

The district courts of the United States have jurisdiction to prevent and restrain violations of section 1972 of this title and it is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as possible, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and subpoenas to that end may be served in any district by the marshal thereof.

(Pub. L. 91-607, title I, §106(c), Dec. 31, 1970, 84 Stat. 1767.)

§1974. Actions by United States; subpoenas for witnesses

In any action brought by or on behalf of the United States under section 1972 of this title, subpoenas for witnesses may run into any district, but no writ of subpoena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the prior permission of the trial court upon proper application and cause shown.

(Pub. L. 91-607, title I, §106(d), Dec. 31, 1970, 84 Stat. 1767.)

§1975. Civil actions by persons injured; jurisdiction and venue; amount of recovery

Any person who is injured in his business or property by reason of anything forbidden in section 1972 of this title may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of the damages sustained by him, and the cost of suit, including a reasonable attorney's fee.

(Pub. L. 91-607, title I, §106(e), Dec. 31, 1970, 84 Stat. 1767.)

§1976. Injunctive relief for persons against threatened loss or damages; equitable proceedings; preliminary injunctions

Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of section 1972 of this title, under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

(Pub. L. 91-607, title I, §106(f), Dec. 31, 1970, 84 Stat. 1767.)

§1977. Limitation of actions; suspension of limitations

(1) Subject to paragraph (2), any action to enforce any cause of action under this chapter shall be forever barred unless commenced within four years after the cause of action accrued.

(2) Whenever any enforcement action is instituted by or on behalf of the United States with respect to any matter which is or could be the subject of a private right of action under this chapter, the running of the statute of limitations in respect of every private right of action arising under this chapter and based in whole or in part on such matter shall be suspended during the pendency of the enforcement action so instituted and for one year thereafter: *Provided*, That whenever the running of the statute of limitations in respect of a cause of action arising under this chapter is suspended under this paragraph, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within the four-year period referred to in paragraph (1).

(Pub. L. 91-607, title I, §106(g), Dec. 31, 1970, 84 Stat. 1768.)

§1978. Actions under other Federal or State laws unaffected; regulations or orders barred as a defense

Nothing contained in this chapter shall be construed as affecting in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this chapter. No regulation or order issued by the Board under this chapter shall in any manner constitute a defense to such action.

(Pub. L. 91-607, title I, §106(h), Dec. 31, 1970, 84 Stat. 1768.)

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§2001. Congressional declaration of policy and objectives

(a) It is declared to be the policy of the Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this chapter to continue to encourage farmer- and rancher-borrowers participation in the management, control, and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit, and to modernize and improve the authorizations and means for furnishing such credit and credit for housing in rural areas made available through the institutions constituting the Farm Credit System as herein provided.

(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives are best served if the institutions of the Farm Credit System provide equitable and competitive interest rates to eligible borrowers, taking into consideration the creditworthiness and access to alternative sources of credit for borrowers, the cost of funds, the operating costs of the institution, including the costs of any loan loss amortization under section 2254(b)¹ of this title, the cost of servicing loans, the need to retain earnings to protect borrowers' stock, and the volume of net new borrowing. Further, it is declared to be the policy of Congress that Farm Credit System institutions take action in accordance with the Farm Credit Act Amendments of 1986 in such manner that borrowers from the institutions derive the greatest benefit practicable from that Act: *Provided*, That in no case is any borrower to be charged a rate of interest that is below competitive market rates for similar loans made by private lenders to borrowers of equivalent creditworthiness and access to alternative credit.

(Pub. L. 92–181, §1.1, Dec. 10, 1971, 85 Stat. 583; Pub. L. 99–509, title I, §1032, Oct. 21, 1986, 100 Stat. 1877; Pub. L. 115–334, title V, §5411(1), Dec. 20, 2018, 132 Stat. 4679.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2254(b) of this title, referred to in subsec. (c), was amended by Pub. L. 115–334, title V, §5411(31)(B)(ii)(II), (iii), Dec. 20, 2018, 132 Stat. 4683. Section 5411(31)(B)(ii)(II) of Pub. L. 115–334 amended section 2254(b) of this title by striking out the third sentence of par. (1), which read as follows: "Notwithstanding the provisions of the preceding sentence and any other provision of this chapter, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of 1 percent of loans outstanding and amortize such capitalized amounts over a period not to exceed 20 years." Section 5411(31)(B)(iii) of Pub. L. 115–334 amended section 2254(b) of this title in part by striking out par. (2), which read as follows: "In accordance with the regulations of the Farm Credit Administration, for the period ending December 31, 1992, System institutions are authorized to use the authorities contained in the third sentence of paragraph (1) except as otherwise provided in section 2278a–6 of this title."

The Farm Credit Act Amendments of 1986, referred to in subsec. (c), is subtitle D of Pub. L. 99–509, title I, §§1031–1037, Oct. 21, 1986, 100 Stat. 1877, which amended sections 2001, 2015, 2075, 2131, 2159, 2205, 2252, and 2254 of this title and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note below and Tables.

AMENDMENTS

2018—Subsec. (c). Pub. L. 115–334 struck out "including any costs of defeasance under section 2159(b) of this title," after "the cost of funds," in first sentence.

1986—Subsec. (c). Pub. L. 99–509 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–205, title IV, §401, Dec. 23, 1985, 99 Stat. 1709, provided that: "The provisions of titles I, II, III, and VI of this Act [enacting sections 2152, 2161, 2199, 2200, 2216 to 2216k, 2219, 2219a, 2253, 2261 to 2273 of this title and provisions set out as notes under section 2001 of this title, amending sections 2002, 2012, 2013, 2031, 2033, 2034, 2051, 2052, 2054, 2072 to 2074, 2077, 2078, 2091, 2093 to 2096, 2098, 2122 to 2126, 2132 to 2134, 2151, 2153 to 2156, 2182, 2183, 2201, 2202, 2205, 2206, 2211 to 2213, 2221 to 2223, 2227, 2241 to 2246, 2248 to 2252, and 2254 of this title, and repealing sections 2152, 2247, and 2253 of this title] shall become effective thirty days after enactment [Dec. 23, 1985]."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–105, §1(a), Feb. 10, 1996, 110 Stat. 162, provided that: "This Act [enacting sections 2214a, 2219e, 2277a–10a, 2277a–10b, 2279bb–7, and 2279cc of this title, amending sections 2013, 2018, 2020, 2129, 2154a, 2199, 2202a, 2252, 2254, 2277a, 2277a–2, 2277a–4, 2277a–5, 2277a–7, 2277a–8, 2277a–10, 2279aa, 2279aa–1, 2279aa–3, 2279aa–5, 2279aa–6, 2279aa–8, 2279aa–9, 2279aa–11 to 2279aa–13, 2279bb–1 to 2279bb–4 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, and section 1999 of Title 7, Agriculture, repealing section 2279aa–7 of this title, and enacting provisions set out as notes under this section and sections 2013 and 2252 of this title] may be cited as the 'Farm Credit System Reform Act of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–376, §1, Oct. 19, 1994, 108 Stat. 3497, provided that: "This Act [enacting section 2206a of this title and amending sections 2122, 2128, and 2129 of this title] may be cited as the 'Farm Credit System Agricultural Export and Risk Management Act'."

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–552, §1(a), Oct. 28, 1992, 106 Stat. 4102, provided that: "This Act [see Tables for classification] may be cited as the 'Farm Credit Banks and Associations Safety and Soundness Act of 1992'."

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–399, §1, Aug. 17, 1988, 102 Stat. 989, provided that: "This Act [see Tables for classification] may be cited as the 'Agricultural Credit Technical Corrections Act of 1988'."

Pub. L. 100–233, §1(a), Jan. 6, 1988, 101 Stat. 1568, provided that: "This Act [see Tables for classification] may be cited as the 'Agricultural Credit Act of 1987'."

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–509, title I, §1031, Oct. 21, 1986, 100 Stat. 1877, provided that: "This subtitle [subtitle D (§§1031–1037) of title I of Pub. L. 99–509, amending sections 2001, 2015, 2075, 2131, 2159, 2205, 2252, and 2254 of this title] may be cited as the 'Farm Credit Act Amendments of 1986'."

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–205, §1, Dec. 23, 1985, 99 Stat. 1678, provided: "That this Act [enacting sections 2152, 2161, 2199, 2200, 2216 to 2216k, 2219, 2219a, 2253, 2261 to 2273 of this title and provisions set out as notes under this section and section 2241 of this title, amending sections 2002, 2012, 2013, 2031, 2033, 2034, 2051, 2052, 2054, 2072 to 2074, 2077, 2078, 2091, 2093 to 2096, 2098, 2122 to 2126, 2132 to 2134, 2151, 2153 to 2156, 2182, 2183, 2201, 2202, 2205, 2206, 2211 to 2213, 2221 to 2223, 2227, 2241 to 2246, 2248 to 2252, and 2254 of this title, and repealing sections 2152, 2247, and 2253 of this title] may be cited as the 'Farm Credit Amendments Act of 1985'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–592, §1, Dec. 24, 1980, 94 Stat. 3437, provided: "That this Act [enacting sections 2205 to 2208, 2211 to 2214, 2218, and 2260 of this title and amending sections 1141b, 2012 to 2020, 2033, 2034, 2051 to 2054, 2072 to 2077, 2091, 2093, 2094, 2096, 2097, 2122, 2124, 2126, 2128 to 2132, 2156, 2181, 2221, 2223, 2242, 2244, 2249, 2251, and 2252 of this title and section 3802 of Title 7, Agriculture] may be cited as the 'Farm Credit Act Amendments of 1980'."

SHORT TITLE

Pub. L. 92–181, §1, Dec. 10, 1971, 85 Stat. 583, provided: "That this Act [enacting this chapter and provisions set out as notes under this section, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, and section 393 of this title, and repealing section 636 et seq. of this title] may be cited as the 'Farm Credit Act of 1971'."

REGULATIONS

Pub. L. 104–105, title III, §301, Feb. 10, 1996, 110 Stat. 185, provided that: "The Secretary of Agriculture and the Farm Credit Administration shall promulgate regulations and take other required actions to implement the provisions of this Act [see Short Title of 1996 Amendment note above] not later than 90 days after the effective date of this Act [Feb. 10, 1996]."

Pub. L. 100–233, title IX, §901, Jan. 6, 1988, 101 Stat. 1717, as amended by Pub. L. 100–399, title VIII, §801, Aug. 17, 1988, 102 Stat. 1006, provided that:

"(a) **ISSUANCE OF REGULATIONS.**—

"(1) **AUTHORITY.**—The Farm Credit Administration Board shall issue such regulations as the Board considers necessary for the orderly and efficient implementation of the provisions of, and the amendments made by, this Act [see Tables for classification] relating to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

"(2) **TIMING.**—To the extent the Farm Credit Administration is required to issue regulations to implement this Act and the amendments made by this Act, the Farm Credit Administration shall issue such regulations as expeditiously as possible, and, except as otherwise provided in this Act, not later than 180 days after the date of the enactment of this Act [Jan. 6, 1988].

"(b) **TEMPORARY RETENTION OF CERTAIN REGULATIONS.**—

"(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the regulations issued by the Farm Credit Administration before the date of the enactment of this Act [Jan. 6, 1988] under provisions amended by this Act shall remain in effect, notwithstanding such amendments, until the Farm Credit Administration issues regulations to implement such amendments, but in no event later than 180 days after such date of enactment.

"(2) **CERTAIN REGULATIONS RELATING TO BORROWERS' RIGHTS.**—The regulations implementing, interpreting, or applying part C of title IV (12 U.S.C. 2201 et seq.) [12 U.S.C. 2199 et seq.]

(other than section 4.13(a) [12 U.S.C. 2199(a)]) (in effect immediately before the date of the enactment of this Act), to the extent that such regulations are not contrary to this Act and the amendments made by this Act, shall remain in effect until January 1, 1989.

"(3) REGULATIONS RELATING TO DISCLOSURE BY BANKS AND ASSOCIATIONS.—Any regulation issued or approved by the Farm Credit Administration that implements, interprets, or applies section 4.13(a) (12 U.S.C. 2201(a) [12 U.S.C. 2199(a)]) (in effect immediately before the date of the enactment of this Act) shall remain in effect for 120 days after such date of enactment."

REPEALS

Pub. L. 92–181, which enacted this chapter, represents a complete rewriting of the farm credit laws and a fundamental reworking of the statutory basis for the farm credit system. In connection with such reworking of material, the existing statutory provisions covering this area were repealed and their substance revised, reenacted, and expanded by Pub. L. 92–181.

The repealed provisions constituted the bulk of chapter 7 of this title. Pub. L. 92–181, §5.40(a), formerly §5.26(a), Dec. 10, 1971, 85 Stat. 624, renumbered §5.40(a), by Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, enumerated the repealed statutes as follows: The Federal Farm Loan Act, as amended; section 2 of the Act of March 10, 1924 (Public Numbered 35, Sixty-eighth Congress, 43 Stat. 17), as amended; section 6 of the Act of January 23, 1932 (Public Numbered 3, Seventy-second Congress, 47 Stat. 14), as amended; the Farm Credit Act of 1933, as amended; sections 29 and 40 of the Emergency Farm Mortgage Act of 1933; Act of June 18, 1934 (Public Numbered 381, Seventy-third Congress, 48 Stat. 983); Act of June 4, 1936 (Public Numbered 644, Seventy-fourth Congress, 49 Stat. 1461), as amended; sections 5, 6, 20, 25(b) and 39 of the Farm Credit Act of 1937, as amended; sections 601 and 602 of the Act of September 21, 1944 (Public Law 425, Seventy-eighth Congress, 58 Stat. 740, 741), as amended; sections 1, 2, 3, 4, 5, 6, 7, 8, 16, and 17(b) of the Farm Credit Act of 1953, as amended; sections 2, 101, and 201(b) of the Farm Credit Act of 1956.

SAVINGS PROVISION

Pub. L. 92–181, §5.40(b), formerly §5.26(b), Dec. 10, 1971, 85 Stat. 625, renumbered §5.40(b), Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided that: "All regulations of the Farm Credit Administration or the institutions of the System and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Acts repealed by subsection (a) of this section [see Repeals note above] shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act [this chapter]. All stock, notes, bonds, debentures, and other obligations issued under the repealed acts shall be valid and enforceable upon the terms and conditions under which they were issued, including the pledge of collateral against which they were issued, and all loans made and security or collateral therefor held by, and all contracts entered into by, institutions of the System shall remain enforceable according to their terms unless and until modified in accordance with the provisions of this Act; it being the purpose of this subsection to avoid disruption in the effective operation of the System by reason of said repeals."

SEPARABILITY

Pub. 92–181, §5.42, formerly §5.28, Dec. 10, 1971, 85 Stat. 625, renumbered §5.42, Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided that: "If any provision of this Act [this chapter], or the application thereof to any persons or in any circumstances, is held invalid, the remainder of this Act and the application of such provision to other persons or in other circumstances shall not be affected thereby."

REFERENCES TO EARLIER FARM CREDIT ACTS

Pub. L. 92–181, §5.40(a), formerly §5.26(a), Dec. 10, 1971, 85 Stat. 624, renumbered §5.40(a), Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided in part that: "All references in other legislation, State or Federal, rules and regulations of any agency, stock, contracts, deeds, security instruments, bonds, debentures, notes, mortgages and other documents of the institutions of the System, to the Acts repealed hereby [see Repeals note above], shall be deemed to refer to comparable provisions of this Act [this chapter]."

RESERVATION OF RIGHT TO AMEND OR REPEAL

Pub. 92–181, §5.43, formerly §5.29, Dec. 10, 1971, 85 Stat. 625, renumbered §5.43, Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, provided that: "The right to alter, amend, or repeal any provision or all of this Act [this chapter] is expressly reserved."

STUDY ON DEMAND FOR AND AVAILABILITY OF CREDIT IN RURAL AREAS FOR AGRICULTURE, HOUSING, AND RURAL DEVELOPMENT

Pub. L. 104-127, title VI, §650, Apr. 4, 1996, 110 Stat. 1105, provided that:

"(a) IN GENERAL.—The Secretary of Agriculture shall conduct a study and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the demand for and availability of credit in rural areas for agriculture, housing, and rural development.

"(b) PURPOSE.—The purpose of the study shall be to ensure that Congress has current and comprehensive information to consider as Congress deliberates on rural credit needs and the availability of credit to satisfy the needs of rural areas of the United States.

"(c) ITEMS IN STUDY.—In conducting the study, the Secretary shall base the study on the most current available data and analyze—

"(1) rural demand for credit from the Farm Credit System, the ability of the Farm Credit System to meet the demand, and the extent to which the Farm Credit System provides loans to satisfy the demand;

"(2) rural demand for credit from the United States banking system, the ability of banks to meet the demand, and the extent to which banks provide loans to satisfy the demand;

"(3) rural demand for credit from the Secretary, the ability of the Secretary to meet the demand, and the extent to which the Secretary provides loans to satisfy the demand;

"(4) rural demand for credit from other Federal agencies, the ability of the agencies to meet the demand, and the extent to which the agencies provide loans to satisfy the demand;

"(5) what measure or measures exist to gauge the overall demand for rural credit, the extent to which rural demand for credit is satisfied, and what the measures have demonstrated;

"(6) a comparison of the interest rates and terms charged by the Farm Credit System Farm Credit Banks, production credit associations, and banks for cooperatives with the rates and terms charged by the banks of the United States for credit of comparable risk and maturity;

"(7) the advantages and disadvantages of the modernization and expansion proposals of the Farm Credit System on the Farm Credit System, the United States banking system, rural users of credit, local rural communities, and the Federal Government, including—

"(A) any added risk to the safety and soundness of the Farm Credit System that may result from approval of a proposal; and

"(B) any positive or adverse impacts on competition between the Farm Credit System and the banks of the United States in providing credit to rural users;

"(8) the nature and extent of the unsatisfied rural credit need that the Farm Credit System proposals are supposed to address and what aspects of the present Farm Credit System prevent the Farm Credit System from meeting the need;

"(9) the advantages and disadvantages of the proposal by commercial bankers to allow banks access to the Farm Credit System as a funding source on the Farm Credit System, the United States banking system, rural users of credit, local rural communities, and the Federal Government, including—

"(A) any added risk to the safety and soundness of the Farm Credit System that may result from approval of the proposal; and

"(B) any positive or adverse impacts on competition between the Farm Credit System and the banks of the United States in providing credit to rural users; and

"(10) problems that commercial banks have in obtaining capital for lending in rural areas, how access to Farm Credit System funds would improve the availability of capital in rural areas in ways that cannot be achieved in the system in existence on the date of enactment of this Act [Apr. 4, 1996], and the possible effects on the viability of the Farm Credit System of granting banks access to Farm Credit System funds.

"(d) INTERAGENCY TASK FORCE.—In completing the study, the Secretary shall use, among other things, data and information obtained by the interagency task force on rural credit."

GAO STUDY OF RURAL CREDIT COST AND AVAILABILITY

Pub. L. 101-624, title XVIII, §1842, Nov. 28, 1990, 104 Stat. 3835, directed Comptroller General of the United States to conduct a study relating to cost and availability of credit in rural America and, not later than 2 years after Nov. 28, 1990, submit a report to Committee on Agriculture of House of Representatives and Committee on Agriculture, Nutrition, and Forestry of Senate.

AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL COMMISSION ON AGRICULTURAL FINANCE AND NATIONAL COMMISSION ON AGRICULTURE AND RURAL DEVELOPMENT POLICY

Pub. L. 100–71, title V, §519(b), July 11, 1987, 101 Stat. 475, authorized and appropriated (1) for National Commission on Agricultural Finance established under section 501 of Pub. L. 99–205, \$100,000, to remain available until expended, and (2) for National Commission on Agriculture and Rural Development [Policy] established under section 5002 of this title, \$100,000, to remain available until expended.

LOAN REVIEW BY LOCAL LENDING INSTITUTIONS

Pub. L. 99–205, title III, §307, Dec. 23, 1985, 99 Stat. 1709, required each local lending institution of Farm Credit System established under this chapter to (1) review each loan that had been placed in non-accrual status by such institution to determine whether such loan could be restructured based on changes in circumstances of such institution as the result of this Act and the amendments made by this Act, and (2) notify in writing borrower of each such loan of provisions of this section.

NATIONAL COMMISSION ON AGRICULTURAL FINANCE

Pub. L. 99–205, title V, §501, Dec. 23, 1985, 99 Stat. 1710, directed President to appoint a National Commission on Agricultural Finance, comprised of 15 members, representing the financial community, the agricultural sector, and government, to conduct a study of methods to ensure availability of adequate credit to agricultural producers and agribusiness, taking into account long-term financing needs of agricultural economy, roles of commercial banks, Farm Credit System, and Farmers Home Administration in meeting those financial needs, with the Commission, in conducting such study, to (1) evaluate financial circumstances relative to both lenders and borrowers of farm credit, (2) evaluate structure, performance, and conduct of private lenders—commercial bankers and Farm Credit System—and public lenders, (3) explore need for long-term assistance in stabilizing value of agricultural assets, and (4) evaluate effect on suppliers, producers, processors, and local communities when financial institutions fail, and not later than Dec. 23, 1986, to submit to Congress a report containing results of study, together with comments and recommendations for legislation providing for a sound, reasonable, and primarily self-supporting credit program for farmers and ranchers as Commission considers appropriate.

¹ [See References in Text note below.](#)

§2002. Farm Credit System

(a) Composition

The Farm Credit System shall include the Farm Credit Banks, the bank for cooperatives, Agricultural Credit Banks, the Federal Land Bank Associations, the Federal Land Credit Associations, the Production Credit Associations, the agricultural credit associations, the Federal Farm Credit Banks Funding Corporation, the Federal Agricultural Mortgage Corporation, service corporations established pursuant to section 2211 of this title, and such other institutions as may be made a part of the Farm Credit System, all of which shall be chartered by and subject to regulation by the Farm Credit Administration.

(b) Farm credit districts

There shall be not more than twelve farm credit districts in the United States, which may be designated by number, one of which districts shall include the Commonwealth of Puerto Rico and one of which districts may, if authorized by the Farm Credit Administration, include the Virgin Islands of the United States: *Provided*, That the extension of credit and other services authorized by this chapter in the Virgin Islands of the United States shall be undertaken only if determined to be feasible under regulations of the Farm Credit Administration. The boundaries of the twelve farm credit districts existing on December 10, 1971, may be readjusted from time to time by the Farm Credit Administration, with the concurrence of the boards of the banks in each district involved. Two or more districts may be merged as provided in section 2252(a)(2) of this title.

(Pub. L. 92–181, §1.2, formerly §§1.2, 5.0, Dec. 10, 1971, 85 Stat. 583, 614; Pub. L. 96–592, title V, §501, Dec. 24, 1980, 94 Stat. 3448; Pub. L. 99–205, title II, §205(c), (g)(1), Dec. 23, 1985, 99 Stat. 1703, 1706; Pub. L. 100–233, title IV, §434, title VIII, §805(a), (v), Jan. 6, 1988, 101 Stat. 1662, 1715, 1716; Pub. L. 100–399, title IX, §901(q)–(s), Aug. 17, 1988, 102 Stat. 1008; Pub. L. 115–334, title V, §5411(2), Dec. 20, 2018, 132 Stat. 4679.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–399, §901(r), transferred section 5.0 of Pub. L. 92–181, which was classified to section 2221 of this title, to subsec. (b) of this section.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–334 added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Farm Credit System shall include the the Farm Credit Banks, the Federal land bank associations, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to regulation by the Farm Credit Administration."

1988—Subsec. (a). Pub. L. 100–399, §901(s), designated existing provisions as subsec. (a), inserted heading, and substituted "regulation" for "the regulation".

Pub. L. 100–233, §434, amended provisions generally. Prior to amendment, provisions read as follows: "The Farm Credit System shall include the Federal land banks, the Federal land bank associations, the Federal intermediate credit banks, the production credit associations, the banks for cooperatives, and such other institutions as may be made a part of the System, all of which shall be chartered by and subject to regulation by the Farm Credit Administration."

Pub. L. 100–233, §805(a), substituted "subject to regulation" for "subject to the regulation".

Subsec. (b). Pub. L. 100–399, §901(q), (r), designated section 2221 of this title as subsec. (b), inserted heading, and substituted "boards of the banks in each district" for "district boards".

Pub. L. 100–233, §805(v), substituted "section 2252(a)(2) of this title" for "section 2252(2) of this title".

1985—Subsec. (a). Pub. L. 99–205, §205(c), substituted "regulation by" for "supervision of".

Subsec. (b). Pub. L. 99–205, §205(g)(1), substituted "Farm Credit Administration" for "Federal Farm Credit Board" in first and second sentences, and made a technical amendment to reference to section 2252(2) of this title to reflect the renumbering of the corresponding section of the original act.

1980—Subsec. (b). Pub. L. 96–592 inserted provisions relating to Virgin Islands of the United States.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENTS

Pub. L. 100–399, title X, §1001, Aug. 17, 1988, 102 Stat. 1008, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this Act [see Tables for classification] shall take effect as if enacted immediately after the enactment of the 1987 Act [Pub. L. 100–233, which was enacted Jan. 6, 1988].

"(b) EXCEPTIONS.—The amendments made by sections 102(b), 102(f), 102(g), 102(h), 201(q), 302(c), 302(d), 302(e), 401, 402(b), 409(d), 411, 414, and 901 (other than by subsections (a), (b), (c), (e), (f), and (g) thereof) of this Act [see Tables for classification] shall take effect immediately after the amendment made by section 401 of the 1987 Act takes effect [section 401 of Pub. L. 100–233, effective 6 months after Jan. 6, 1988]."

Pub. L. 100–233, title IV, §434, Jan. 6, 1988, 101 Stat. 1662, provided in part that the amendment of this section by section 434 of Pub. L. 100–233 is effective 6 months after Jan. 6, 1988.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

CONSOLIDATION OF DISTRICT FARM CREDIT BANKS

Pub. L. 100–233, title IV, §412, Jan. 6, 1988, 101 Stat. 1638, as amended by Pub. L. 100–399, title IV, §404, Aug. 17, 1988, 102 Stat. 999, provided that:

"(a) SUBMISSION OF PROPOSAL.—

"(1) SPECIAL COMMITTEE.—

"(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this section [Jan. 6, 1988], a special committee shall be selected pursuant to regulations of the Farm Credit Administration for the purpose of developing a proposal for the consolidation of Farm Credit System districts.

"(B) COMPOSITION.—The special committee selected under subparagraph (A) shall be composed of one representative from each Farm Credit Bank board and the members of the Board of Directors of the Assistance Board.

"(2) DEVELOPMENT OF PROPOSAL.—Not later than 6 months after the formation of the special committee, the committee shall develop a proposal to consolidate the Farm Credit Banks into no less than six financially viable Farm Credit Banks through inter-district mergers.

"(3) REPORT.—Not later than the end of each calendar quarter beginning at least 6 months after the selection of the special committee, such committee shall prepare and submit, to the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on the progress of the committee in developing a proposal under this subsection.

"(b) PREREQUISITES TO CONSOLIDATION.—

"(1) FCA REVIEW OF PROPOSAL.—Prior to the submission of the proposal developed under subsection (a)(2) to the stockholders under paragraph (3), the proposal together with all information to be presented to the stockholders, shall be submitted to the Farm Credit Administration for approval.

"(2) PREREQUISITES.—The proposal developed under subsection (a)(2) shall not be submitted to stockholders under paragraph (3) unless the proposal is approved by—

"(A) a majority of the members of the Board of Directors of the Assistance Board; and

"(B) the members of the special committee that represent the districts affected by the terms of the proposal.

"(3) SUBMISSION TO STOCKHOLDERS.—Not later than the end of the 18-month period after the date of enactment of this Act [Jan. 6, 1988], each Farm Credit Bank involved, in consultation with the special committee, shall submit the proposed merger affecting such bank to the voting stockholders of each such bank.

"(4) STOCKHOLDER VOTE.—Each association shall be entitled to cast a number of votes equal to the number of voting stockholders of such association."

[For termination, effective May 15, 2000, of reporting provisions in section 412(a)(3) of Pub. L. 100–233, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 166 of House Document No. 103–7.]

APPLICABILITY OF LAWS ENACTED AFTER JANUARY 1, 1960

Pub. L. 86–168, title II, §203(b), Aug. 18, 1959, 73 Stat. 390, provided that: "Any Act of Congress enacted after the effective date of this title [Jan. 1, 1960] and which states that it shall be applicable to agencies or instrumentalities of the United States or to corporations controlled or owned, in whole or in part, by the United States, or to officers and employees of the United States or such agencies or instrumentalities or corporations, shall not be applicable to a Federal land bank, Federal intermediate credit bank, or bank for cooperatives, or to its directors, officers, or employees unless such Act specifically so provides by naming such banks."

SUBCHAPTER I—FARM CREDIT BANKS

EDITORIAL NOTES

CODIFICATION

Title I of the Farm Credit Act of 1971, comprising this subchapter, was originally enacted by Pub. L. 92–181, title I, Dec. 10, 1971, 85 Stat. 583, and amended by Pub. L. 96–592, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, Dec. 23, 1985, 99 Stat. 1678; Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1874; Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568. Such title is shown herein, however, as having been added by Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 100–233.

§2011. Establishment, charters, titles, branches

(a) Establishment

The banks established pursuant to the merger of each District Federal Intermediate Credit Bank and Federal Land Bank (hereinafter referred to in this subchapter as "Farm Credit Banks"), as

provided in section 410 of the Agricultural Credit Act of 1987, shall be Federally chartered instrumentalities of the United States.

(b) Charters

The Farm Credit Administration shall, consistent with this chapter, issue charters for, and approve amendments to charters of, the Farm Credit Banks.

(c) Title

Each Farm Credit Bank may include in its title the name of the city in which it is located or other geographical designation.

(d) Branches

Each Farm Credit Bank may establish such branches or other offices as may be appropriate for the effective operation of its business.

(Pub. L. 92-181, title I, §1.3, as added Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622; amended Pub. L. 100-399, title IV, §401(a), (b), Aug. 17, 1988, 102 Stat. 995.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 410 of the Agricultural Credit Act of 1987, referred to in subsec. (a), is section 410 of Pub. L. 100-233, which is set out as a note below.

PRIOR PROVISIONS

A prior section 2011, Pub. L. 92-181, title I, §1.3, Dec. 10, 1971, 85 Stat. 583; Pub. L. 100-233, title VIII, §802(a), Jan. 6, 1988, 101 Stat. 1710, related to establishment, title, and branches of Federal land banks prior to the general amendment of this subchapter by Pub. L. 100-233, §401.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-399, §401(a), inserted ", as provided in section 410 of the Agricultural Credit Act of 1987," before "shall".

Subsec. (b). Pub. L. 100-399, §401(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The charters or organization certificates of Farm Credit Banks may be modified from time to time by the Farm Credit Administration Board, not inconsistent with the provisions of this subchapter, as may be necessary or expedient to implement this chapter."

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

LONG-TERM LENDING AUTHORITY OF FARM CREDIT BANK OF TEXAS WITH RESPECT TO STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI

Pub. L. 102-552, title IV, §401(b), Oct. 28, 1992, 106 Stat. 4128, as amended by Pub. L. 110-234, title V, §5407(c)(3), May 22, 2008, 122 Stat. 1160; Pub. L. 110-246, §4(a), title V, §5407(c)(3), June 18, 2008, 122 Stat. 1664, 1922, provided that:

"(1) IN GENERAL.—Notwithstanding any other provision of law (except section 7.7 of the Farm Credit Act of 1971 [12 U.S.C. 2279c]), the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective

February 9, 1989 (except to the extent that the charter may be further amended by the Farm Credit Administration in accordance with its general authorities under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

"(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989."

MANDATORY MERGER OF SYSTEM INSTITUTIONS

Pub. L. 100–233, title IV, §410, Jan. 6, 1988, 101 Stat. 1637, as amended by Pub. L. 100–399, title IV, §402, Aug. 17, 1988, 102 Stat. 999; Pub. L. 102–552, title IV, §401(a), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 110–234, title V, §5407(c)(2), May 22, 2008, 122 Stat. 1160; Pub. L. 110–246, §4(a), title V, §5407(c)(2), June 18, 2008, 122 Stat. 1664, 1922, provided that:

"(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this section [Jan. 6, 1988], the Federal land bank and the Federal intermediate credit bank of each Farm Credit System district shall merge into a Farm Credit Bank in such district pursuant to a plan of merger agreed on by the Boards of Directors of such banks and approved by the Farm Credit Administration, or if such banks fail to agree, a plan of merger prescribed by the Farm Credit Administration. The mergers required by this section shall be implemented without regard to title VII [enacting sections 2279aa to 2279aa–14 of this title, amending sections 2012, 2033, 2072, and 2093 of this title, section 1988 of Title 7, Agriculture, and section 9105 of Title 31, Money and Finance, and enacting provisions set out as notes under section 2279aa of this title and section 1988 of Title 7].

"(b) CAPITAL STOCK.—Notwithstanding section 1.6 (as added by section 401 of this Act) [12 U.S.C. 2014], the number of shares of capital stock issued by a Farm Credit Bank to stockholders and other owners of the institution involved in the merger, and the rights and privileges of such shares (including voting power, redemption rights, preferences on liquidation, and the right to dividends) shall be determined by the plan of merger adopted by the merging banks, and shall be consistent with section 4.3A [12 U.S.C. 2154a] and the regulations issued by the Farm Credit Administration.

"(c) ASSISTANCE.—The Assistance Board established under section 6.0 [12 U.S.C. 2278a] shall direct the Financial Assistance Corporation established under section 6.20 [former 12 U.S.C. 2278b] to provide any Farm Credit Bank with that amount of financial assistance as is necessary to ensure that the stock of the Farm Credit Bank, upon implementation of the merger, has a book value equal to 75 percent of par, and such Farm Credit Bank shall be subject to all of the requirements of title VI of the Farm Credit Act of 1971 [12 U.S.C. 2278a et seq.].

"(d) INITIAL BOARD.—Notwithstanding section 1.4 (as added by section 401 of this Act) [12 U.S.C. 2012], the initial board of each Farm Credit Bank shall be composed of the members of the district board (which is dissolved upon the creation of such bank) elected by the production credit associations, Federal land bank associations, and stockholders at large. Such initial board shall operate for such term as is agreed to by the members of the board, except that such period shall not exceed two years. Thereafter the board shall be elected and serve in accordance with the provisions of section 1.4 of the Farm Credit Act of 1971 [12 U.S.C. 2012].

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

"(1) NEGOTIATED MERGER.—

"(A) REQUIREMENT.—

"(i) IN GENERAL.—Not later than June 30, 1993, except as provided in subparagraph (C), the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection [Oct. 28, 1992]) shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279f).

"(ii) MERGER OF ENTIRE BANK.—Notwithstanding subparagraph (B), or any other provision of law, the Farm Credit Administration shall approve a merger of the Federal Intermediate Credit Bank of Jackson only if the Bank (as chartered on the date of enactment of this subsection [Oct. 28, 1992], except as provided in subparagraph (B)(ii)(II)(bb)) merges in its entirety with a Farm Credit Bank.

"(iii) LIMITED LENDING AUTHORITY.—Notwithstanding any provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (except section 7.7 of that Act [12 U.S.C. 2279c]), the Farm Credit Bank resulting from a merger under this subsection shall have only the lending authorities in the States of Alabama, Louisiana, and Mississippi that the constituent banks exercised in such States immediately prior to the merger, except as may be provided in section 5.17(a)(2) of such Act (12 U.S.C. 2252(a)(2)).

"(B) OPERATING AND MERGER AUTHORITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 [12 U.S.C. 2071 et seq.] (as in effect immediately before the amendment made by section 401 took effect) and such provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (as in effect after the amendment), as the Farm Credit Administration deems appropriate to carry out the purposes of this subsection and such Act. This subparagraph shall take effect as if it had become law at the same time as the amendment made by section 401 and shall remain in effect until the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(ii) LIMITATION ON OPERATING AUTHORITY.—

"(I) IN GENERAL.—Notwithstanding clause (i) and subparagraph (A)(ii), the authority of the Federal Intermediate Credit Bank of Jackson to operate as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) DISTRICT BOUNDARY MODIFICATION.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson shall not include the authority for the Bank to modify, nor shall the Farm Credit Administration approve such a modification to, the boundaries of the Fifth Farm Credit District to reaffiliate any portion of the District with another Farm Credit Bank, except—

"(aa) in the case of the merger of the entire Bank as an entity with a Farm Credit Bank such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson (except as provided in item (bb)) is merged with the Farm Credit Bank; and

"(bb) in the case of the reaffiliation of the Northwest Louisiana Production Credit Association with another farm credit district pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations under such Act.

"(iii) LIMITATION ON AUTHORITY TO MERGE.—

"(I) IN GENERAL.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) BANK INTEGRITY.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to a merger of the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection [Oct. 28, 1992] to include the territory in the States of Alabama, Louisiana, and Mississippi, except as provided in clause (ii)(II)(bb)) as a whole entity such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson is merged with the Farm Credit Bank.

"(III) LIMITATION.—Beginning on the date of an order issued by the Farm Credit Administration under subparagraph (D), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to the arbitrated merger provided for in paragraph (2).

"(C) EXTENSION.—

"(i) LETTER OF INTENT.—If no later than June 30, 1993, the Federal Intermediate Credit Bank of Jackson delivers to the Farm Credit Administration a letter of intent to merge with a Farm Credit Bank, summarizing the terms and conditions of the merger (including, but not limited to, board composition, capital structure, exchange, or transfer of equities, and termination) signed by the chief executive officer and the members of the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank, the Farm Credit Administration shall, on its determination that the letter of intent represents a bona fide good faith agreement in principle between the two banks to merge, and that there is at least a reasonable prospect that the merger will be completed in an expeditious manner, grant a one-time extension, until a date certain not later than October 31, 1993, of the requirement under subparagraph (A). Any extension provided under this subparagraph may be conditioned on such terms and conditions as the Farm Credit Administration determines necessary to ensure that the merger described in the letter of intent is completed by the closing date of the extension.

"(ii) COMPLIANCE.—If the Farm Credit Administration grants an extension under clause (i), it shall issue an order under subparagraph (D) immediately if—

"(I) the Federal Intermediate Credit Bank of Jackson, or the Farm Credit Bank that is a signatory to the letter of intent under clause (i), provides written notification to the Farm Credit Administration that the bank does not intend to complete the merger described in the letter of intent;

- "(II) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not complying with any term or condition on which an extension under clause (i) was conditioned; or
- "(III) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not pursuing in good faith the merger provided for in the letter of intent.

If the Farm Credit Administration issues an order under subparagraph (D) pursuant to this clause, the Federal Intermediate Credit Bank of Jackson shall be deemed to have failed to comply with the requirements of subparagraph (A).

"(D) FAILURE TO MERGE; ISSUANCE OF ORDER.—If the Federal Intermediate Credit Bank of Jackson fails to comply, or notifies the Farm Credit Administration in writing that it does not intend to comply, with the requirements of subparagraph (A), the Farm Credit Administration shall, within 5 days after the date specified in subparagraph (A), or such other date specified by the Farm Credit Administration under subparagraph (C), issue, notwithstanding any other provision of law, an order requiring the Federal Intermediate Credit Bank of Jackson to merge with the Farm Credit Bank of Texas in accordance with paragraph (2).

"(2) ARBITRATED MERGER.—

"(A) IN GENERAL.—Not later than 30 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association to serve as the arbitrator referred to in this paragraph.

"(B) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under an order issued under paragraph (1)(D), such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

"(C) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (F) shall be paid from the Farm Credit Assistance Fund established under section 6.25 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-5).

"(D) DEVELOPMENT OF MERGER PLANS.—

"(i) IN GENERAL.—Not later than 100 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the arbitrator shall develop and submit for certification to the Farm Credit Administration a plan specifying the terms and conditions of the merger of the two banks required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan, the arbitrator shall, to the extent practicable, achieve the following objectives:

- "(I) Implementation of the preferences expressed by the affected and interested parties in submissions under clause (ii).
- "(II) Valuation of assets fairly, equitably, and consistently for all parties involved.
- "(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.
- "(IV) Ensure the viability of the resulting Farm Credit Bank and associations of the bank and the ability of the resulting bank and associations of the bank to lend to eligible borrowers at reasonable and competitive rates of interest.

"(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall make available all books, records, financial information, and other material that the arbitrator determines is necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas on the written request of the bank and at the bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

"(iii) CONTENT OF PLAN; FARM CREDIT BANK.—The plan developed and submitted

under clause (i) shall include provisions regarding the following matters:

- "(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).
- "(II) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks.
- "(III) The terms and conditions on which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson and, if necessary, the Farm Credit Bank of Texas, will be converted into shares of the resulting Farm Credit Bank.
- "(IV) The capital structure and capitalization levels of the resulting Farm Credit Bank and the affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).
- "(V) The terms of financing agreements between any production credit associations or agricultural credit associations described in clause (iv), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).
- "(VI) Any other terms and conditions or other matters that the arbitrator considers necessary.
 - "(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—If the arbitrator determines that the chartering of agricultural credit associations in the States of Alabama, Louisiana, and Mississippi will be in the best interests of the farmers, ranchers, and aquatic producers eligible to borrow from Farm Credit System associations, the plan required under this subparagraph shall also include, based on submissions from the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, provisions for the establishment of agricultural credit associations to operate in the States, subject to approval in the referendum under subparagraph (F). Such provisions shall include provisions regarding the following matters:
 - "(I) A proposal for the establishment of an agricultural credit association in each of the geographic areas specified in subparagraph (F)(iii) (the charters of which, if validly issued under subparagraph (G)(i) pursuant to approval in the referendum under subparagraph (F), shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).
 - "(II) The initial composition, if the proposal for the establishment of agricultural credit associations is approved, of the board of directors of each such agricultural credit association (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).
 - "(III) The valuation, for purposes of the proposed merger of the production credit association and the Federal land bank association in each of the geographic areas specified in subparagraph (F)(iii), of the assets and liabilities of the associations.
 - "(IV) The terms and conditions on which the shares of capital stock of any associations that may merge under the plan to form agricultural credit associations will be converted into shares of the resulting agricultural credit associations.
 - "(V) The capital structure and capitalization levels of the resulting Farm Credit Bank and such affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which capital structure and capitalization levels shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).
 - "(VI) The terms of financing agreements between any agricultural credit associations and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).
 - "(VII) Any other terms and conditions or other matters that the arbitrator considers necessary.
 - "(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any other matters relevant to the assistance to be provided by the Insurance Corporation to facilitate the merger under subparagraph (H).
 - "(E) CERTIFICATION OF PLAN.—Not later than 30 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—
 - "(i) certify; or

"(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and any resulting associations are proposed to be organized in such a fashion that they will, on implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, not later than 15 days after receipt of the recommended revisions, incorporate the revisions into the plan as the arbitrator deems appropriate to secure the certification.

"(F) REFERENDUM ON ASSOCIATION STRUCTURE.—

"(i) IN GENERAL.—Not later than 170 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the American Arbitration Association shall conduct, and compile and forward to the Farm Credit Administration the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi, in accordance with the Election Rules of the American Arbitration Association, to determine whether the farmer-borrowers of each association in the geographic areas described in clause (iii) prefer to have credit delivered—

"(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association as proposed in the plan; and

"(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association as proposed in the plan.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

"(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of voting to charter an agricultural credit association and setting forth factors that farmer-borrowers should consider relevant to the choice between credit delivery through the current association structure and the chartering of an agricultural credit association. The arbitrator shall develop the disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

"(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

"(I) The area served by the Federal Land Bank Association of South Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(III) The area served by the Federal Land Bank Association of South Alabama.

"(IV) The area served by the Federal Land Bank Association of North Alabama.

"(V) The area served by the Federal Land Bank Association of South Louisiana.

"(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

"(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

"(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

"(G) IMPLEMENTATION.—Not later than 10 days after the date of the receipt of the results of the referendum conducted under subparagraph (F), the Farm Credit Administration shall issue such charters or charter amendments and take such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan. In this regard, the Farm Credit Administration shall—

"(i) issue a charter or charter amendment and take any such other regulatory actions as may be necessary to provide for the establishment of an agricultural credit association in each of the geographic areas described in subparagraph (F)(iii) where a majority of the farmer-borrowers of both

the production credit association and the Federal land bank association voted under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (which charter shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations); and

"(ii) not issue a charter or charter amendment or take any such other regulatory action to provide for the establishment of an agricultural credit association in any of the geographic areas described in subparagraph (F)(iii) where less than a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted in the referendum under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (provided that the charter of any remaining association in such geographic area shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(H) FACILITATION.—

"(i) IN GENERAL.—Beginning on the date of the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the Farm Credit System Insurance Corporation shall expend amounts from the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan.

"(ii) MAINTENANCE OF BOOK VALUE.—Assistance provided by the Corporation under this subparagraph shall be in amounts not to exceed that required to maintain book value per share of stockholders' equity at the same value reflected on the most recent audited financial statements of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas prior to or effective with the date of the merger.

"(iii) OTHER ASSISTANCE.—Until the expiration of 5 years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection [Oct. 28, 1992], whichever is later, the Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to the merger, or any successor to the association, to pay when due any obligation of principal or interest owed by the association or its successor to the resulting bank.

"(iv) TERMS AND CONDITIONS.—Assistance provided by the Corporation under this subparagraph shall be on such terms and conditions as the Corporation deems appropriate to facilitate the merger.

"(I) SAFETY AND SOUNDNESS.—

"(i) IN GENERAL.—Except as provided in clause (ii), if at any time prior to the completion of the merger required under this subsection the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration, after consultation with the respective boards of directors of the affected banks and taking into consideration the purposes of this subsection, may require the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank, subject to such terms and conditions as the Farm Credit Administration may prescribe. The Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed under this subparagraph, including the provision of assistance as provided in section 5.61(a)(2)(A)(iii) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(a)(2)(A)(iii)), on such terms and conditions as the Corporation deems appropriate.

"(ii) ARBITRATED MERGER.—If at any time after the Farm Credit Administration issues an order under paragraph (1)(D), but prior to the completion of the merger required under this subsection, the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration shall, after consultation with the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, take such action as it deems necessary pursuant to the authorities provided under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to return the operation of the Federal Intermediate Credit Bank of Jackson to a safe and sound condition, pending the completion of the merger under paragraph (2).

"(J) MERGER PLAN FOR AGRICULTURAL CREDIT ASSOCIATIONS.—In any of the States of Alabama, Louisiana, or Mississippi where all of the associations are chartered as agricultural credit

associations, the boards of directors of each such association in each State are encouraged to submit to the farmer-borrowers of each such association for their approval a plan for merging the associations into one statewide agricultural credit association, in accordance with the applicable provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

"(K) DEFINITIONS.—As used in this paragraph:

"(i) AGRICULTURAL CREDIT ASSOCIATION.—The term 'agricultural credit association' means an association having the same authorities, attributes, and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8 of the Farm Credit Act of 1971 (12 U.S.C. 2279c-1).

"(ii) FARMER-BORROWER.—The term 'farmer-borrower' means a borrower from a Farm Credit System association in the State of Alabama, Louisiana, or Mississippi who holds voting stock, or is eligible to hold voting stock, in the association or a stockholder in any such association.

"(3) REVIEW.—

"(A) IN GENERAL.—Actions and determinations of the arbitrator, the Farm Credit Administration, or the Farm Credit System Insurance Corporation pursuant to this subsection shall not be subject to judicial review except as provided in this paragraph, nor shall they be subject to the requirements of subchapter II of chapter 5 or chapter 7 of title 5, United States Code.

"(B) AGENCY DETERMINATIONS.—

"(i) IN GENERAL.—Any petition for review of a determination or other action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit not later than 10 days after the determination, or the petition shall be barred. The court shall have exclusive jurisdiction to determine the proceeding in accordance with standard procedures as supplemented by procedures hereinafter provided and no other district court or court of appeals of the United States shall have jurisdiction over any such challenge in any proceeding instituted prior to, on, or after the date of enactment of this subsection. The review of any determination or action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be based on the examination of all of the information before the Farm Credit Administration or the Farm Credit System Insurance Corporation, as the case may be, at the time the determination was made. The court reviewing the determination or action shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge not later than 50 days from the date the challenge is brought unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.

"(C) ARBITRATOR DETERMINATIONS.—

"(i) IN GENERAL.—Except as otherwise provided in this paragraph, any petition for review of a determination or other action of the arbitrator named under paragraph (2) shall be filed in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.). Such Act shall apply to the arbitration conducted pursuant to paragraph (2) to the same extent as if the arbitration were established in a contract evidencing a transaction in commerce between the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas.

"(ii) PROCEDURES.—Notwithstanding the United States Arbitration Act (9 U.S.C. 1 et seq.), any petition for review of a determination or other action of the arbitrator under this subsection shall be filed not later than 10 days after the determination, or the petition shall be barred. The court specified under such Act shall have exclusive jurisdiction to determine the proceeding in accordance with the applicable procedures under such Act, as supplemented by procedures hereinafter provided, and no other district court shall have jurisdiction over any such challenge in any such proceeding. Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other

actions that are shorter than the limits specified in the United States Arbitration Act or the Federal Rules of Civil or Appellate Procedure [28 U.S.C. App.].

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge as soon as possible in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), or not later than 30 days from the date the challenge is brought, whichever is sooner, unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution."

§2012. Board of directors

Each Farm Credit Bank shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that, at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.

(Pub. L. 92–181, title I, §1.4, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622; amended Pub. L. 100–399, title IV, §401(c), Aug. 17, 1988, 102 Stat. 995.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2012, Pub. L. 92–181, title I, §1.4, Dec. 10, 1971, 85 Stat. 584; Pub. L. 96–592, title I, §101, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, title II, §205(d)(1), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 100–233, title VII, §705(a), title VIII, §802(b), Jan. 6, 1988, 101 Stat. 1706, 1710; Pub. L. 100–399, title VI, §604, Aug. 17, 1988, 102 Stat. 1006, related to corporate existence and general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Pub. L. 100–399 struck out "from its voting stockholders" after "shall elect".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2013. General corporate powers

Each Farm Credit Bank shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

- (1) adopt and use a corporate seal;
- (2) have succession until dissolved under the provisions of this chapter or other Act of Congress;
- (3) make contracts;
- (4) sue and be sued;
- (5) acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business;
- (6) make, participate in, and discount loans, make commitments for credit, accept advance payments, and provide services as authorized in this chapter, and charge fees for such;

(7) operate under the direction of its board of directors;

(8) provide by its board of directors for a president, one or more vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, as provided in this chapter, define their duties, and require surety bonds or make other provision against losses occasioned by employees;

(9) prescribe, by its board of directors, its bylaws that shall be consistent with law, and that shall provide for—

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired; and

(B) the manner in which it is to—

(i) select officers, employees, and agents;

(ii) acquire, hold, and transfer property;

(iii) make loans and discounts;

(iv) conduct general business; and

(v) exercise and enjoy the privileges granted to it by law;

(10) borrow money and issue notes, bonds, debentures, or other obligations individually, or in concert with one or more other banks of the System, of such character, terms, conditions, and rates of interest as may be determined as provided for in this chapter;

(11) purchase nonvoting stock in, or pay in surplus to, and accept deposits of securities or funds from associations in its district, and pay interest on such funds;

(12) participate with—

(A) one or more other Farm Credit Banks in loans under this subchapter on such terms as may be agreed on among such banks;

(B) one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title; and

(C) lenders that are not Farm Credit System institutions in loans that the bank is authorized to make under this subchapter;

(13) approve the salary scale of the officers and employees of the associations in its district and supervise the exercise by such associations of the functions vested in or delegated to them;

(14) deposit the securities and current funds of the bank with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 1813 of this title) and pay fees and receive interest on such as may be agreed, and when designated for that purpose by the Secretary of the Treasury, such bank—

(A) shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary;

(B) may be employed as a fiscal agent of the Government; and

(C) shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of such bank;

except that no Government funds deposited under the provisions of this paragraph shall be invested in loans or bonds or other obligations of the bank;

(15) buy and sell obligations of, or insured by, the United States or any agency thereof, or securities backed by the full faith and credit of any such agency, and make other investments as may be authorized under regulations issued by the Farm Credit Administration;

(16) sell to lenders that are not Farm Credit System institutions interests in loans, and buy from and sell to Farm Credit System institutions interests in loans and other extensions of credit, and nonvoting stock as may be authorized under regulations issued by the Farm Credit Administration;

(17) conduct studies and make and adopt standards for lending;

(18) delegate to associations such functions as the bank determines appropriate;

(19) amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of such items;

(20) for loans made by the bank, require associations to endorse notes and other obligations of borrowers from the bank;

(21) exercise through the board of directors or authorized officers, employees, or agents of the bank, all such incidental powers as may be necessary or expedient to carry on the business of the bank;

(22) accept contributions to the capital of the bank from associations and account for such in accordance with generally accepted accounting principles, except as may be authorized by the Farm Credit Administration;

(23) as may be authorized by the board of directors of the bank, agree with other Farm Credit System institutions to share loan and other losses, whether to protect against capital impairment or for any other purpose; and

(24) operate as an originator and become certified as a certified facility under subchapter VIII.

(Pub. L. 92–181, title I, §1.5, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1623; amended Pub. L. 100–399, title IV, §401(d), Aug. 17, 1988, 102 Stat. 995; Pub. L. 104–105, title II, §201, Feb. 10, 1996, 110 Stat. 172.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2013, Pub. L. 92–181, title I, §1.5, Dec. 10, 1971, 85 Stat. 585; Pub. L. 96–592, title I, §102, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, title II, §205(d)(2), (3), title VI, §601, Dec. 23, 1985, 99 Stat. 1703, 1711; Pub. L. 100–233, title VIII, §802(c), Jan. 6, 1988, 101 Stat. 1710, related to land bank stock, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1996—Par. (13). Pub. L. 104–105 struck out ", and the appointment and compensation of the chief executive officer thereof," after "in its district".

1988—Par. (9). Pub. L. 100–399, §401(d)(1), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "prescribe by its board of directors—

"(A) the bylaws of such bank that shall not be inconsistent with law, providing for the classes of the stock of the bank and the manner in which such stock shall be issued, transferred, and retired;

"(B) the officers, employees, and agents of the bank as provided for;

"(C) the property of the bank acquired, held, and transferred;

"(D) the loans and discounts made by the bank;

"(E) the general business conducted by the bank; and

"(F) the privileges granted to the bank by law exercised and enjoyed;".

Par. (11). Pub. L. 100–399, §401(d)(2), substituted "of securities or" for "or securities of".

Par. (12)(B), (C). Pub. L. 100–399, §401(d)(3), struck out "participate with" before "one or more" in subpar. (B) and "participate with" before "lenders that" in subpar. (C).

Par. (14). Pub. L. 100–399, §401(d)(4), substituted "(within the meaning of section 1813 of this title)" for "as defined in section 1813 of this title".

Par. (18). Pub. L. 100–399, §401(d)(5), struck out "Federal land bank" after "delegate to".

Par. (22). Pub. L. 100–399, §401(d)(6), substituted "in accordance with generally accepted accounting principles, except as may be authorized by the Farm Credit Administration;" for "as authorized by the Farm Credit Administration; and".

Par. (23). Pub. L. 100–399, §401(d)(7), struck out "and approved by the Farm Credit Administration Board" after "of the bank" and substituted "purpose; and" for "purpose."

Par. (24). Pub. L. 100–399, §401(d)(8), added par. (24).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–105, title III, §302, Feb. 10, 1996, 110 Stat. 185, provided that: "Except as otherwise provided in this Act, this Act [see Short Title of 1996 Amendment note set out under section 2001 of this title] and the amendments made by this Act shall become effective on the date of enactment [Feb. 10, 1996]."

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2014. Farm Credit Bank capitalization

In accordance with section 2154a of this title, the Farm Credit Banks shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the bank and the manner in which bank stock shall be issued, held, transferred, and retired and bank earnings distributed.

(Pub. L. 92–181, title I, §1.6, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1624.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2014, Pub. L. 92–181, title I, §1.6, Dec. 10, 1971, 85 Stat. 585; Pub. L. 96–592, title I, §103, Dec. 24, 1980, 94 Stat. 3438, related to real estate mortgage loans, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2015. Lending authority

(a) Real estate loans and related assistance

(1) Real estate loans

The Farm Credit Banks may make or participate with other lenders in long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, or to producers or harvesters of aquatic products, and make continuing commitments to make such loans under specified circumstances, for a term of not less than 5 nor more than 40 years.

(2) Financial assistance

The Farm Credit Banks may provide and extend financial assistance to, and discount for, or purchase from, a Federal land bank association any note, draft, or other obligation with the endorsement or guarantee of the association, the proceeds of which have been advanced to persons eligible and for purposes of financing by the association, as authorized under section 2279b(a) of this title.

(b) Intermediate credit

(1) In general

The Farm Credit Banks are authorized to make loans and extend other similar financial assistance to and to discount for or purchase from—

- (A) any production credit association, or
- (B) any national bank, State bank, trust company, agricultural credit corporation,

incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products,

any note, draft, or other obligation with the institution's endorsement or guarantee, the proceeds of which note, draft, or other obligation have been advanced to persons and for purposes eligible for financing by production credit associations as authorized by this chapter.

(2) Participation with other entities

The Farm Credit Banks may participate with one or more production credit associations or other Farm Credit Banks in the making of loans to eligible borrowers and may participate with one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title.

(3) Limitations on extension of financial services

(A) General rule

No paper shall be purchased from or discounted for, and no loans shall be made or other similar financial assistance extended by a Farm Credit Bank to any entity identified in paragraph (1)(B) of this subsection if the amount of such paper added to the aggregate liabilities of such entity, whether direct or contingent (other than bona fide deposit liabilities), exceeds ten times the paid-in and unimpaired capital and surplus of such entity or the amount of such liabilities permitted under the laws of the jurisdiction creating such institution, whichever is the lesser.

(B) Limitation on national bank

It shall be unlawful for any national bank which is indebted to any Farm Credit Bank, on paper discounted or purchased under paragraph (1), to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities direct or contingent, will exceed the limitation described in subparagraph (A).

(4) FCA regulations

(A) In general

All of the loans, financial assistance, discounts and purchases authorized by this subsection shall be subject to regulations of the Farm Credit Administration and shall be secured by collateral, if any, as may be required in such regulations.

(B) Requirement of regulations

The regulations shall assure that such loans, financial assistance, discounts, and purchases are available on a reasonable basis to any financing institution authorized to receive such services under paragraph (1)(B) of this subsection, and that—

- (i) is significantly involved in lending for agricultural or aquatic purposes;
- (ii) demonstrates a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers;
- (iii) has limited access to national or regional capital markets; and
- (iv) does not use such services to expand its financing activities to persons and for purposes other than those authorized under subchapter II.

(C) Fees

The regulations may authorize a Farm Credit Bank to charge reasonable fees for any commitment to extend service under this section to such a financing institution.

(D) Subsidiaries and affiliates

For purposes of this subsection, a financing institution together with the subsidiaries and affiliates of such may be considered as one, but such determination to consider such institution together with the subsidiaries and affiliates of such as one shall be made in the first instance by

the bank and in the event of a denial by the bank of its services to a financial institution, then by the Farm Credit Administration on a case-by-case basis with due regard to the total relationship of the financing institution, its subsidiaries, and affiliates.

(5) Effective date

Nothing in this section shall require termination of discount relationships in existence on December 24, 1980.

(Pub. L. 92-181, title I, §1.7, as added Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1625; amended Pub. L. 100-399, title IV, §401(e), (f), Aug. 17, 1988, 102 Stat. 995, 996.)

EDITORIAL NOTES

CODIFICATION

In subsec. (b)(5), "December 24, 1980" substituted for "the effective date of the Farm Credit Act Amendments of 1980".

PRIOR PROVISIONS

A prior section 2015, Pub. L. 92-181, title I, §1.7, Dec. 10, 1971, 85 Stat. 585; Pub. L. 96-592, title I, §104, Dec. 24, 1980, 94 Stat. 3438; Pub. L. 99-509, title I, §1033(a), Oct. 21, 1986, 100 Stat. 1877, related to interest rates and other charges, prior to the general amendment of this subchapter by Pub. L. 100-233, §401.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-399, §401(e), inserted in heading "and related assistance" and amended text generally. Prior to amendment, text read as follows: "The Farm Credit Banks are authorized to make or participate with other lenders in long-term real estate mortgage loans in rural areas, as defined by the Farm Credit Administration, or to producers or harvesters of aquatic products, and make continuing commitments to make such loans under specified circumstances, for a term of not less than 5 nor more than 40 years."

Subsec. (b)(2). Pub. L. 100-399, §401(f)(1), struck out provision that banks may own and lease or lease with an option to purchase to persons eligible for assistance under this subchapter, equipment needed in the operations of such persons.

Subsec. (b)(3). Pub. L. 100-399, §401(f)(2), substituted in heading "services" for "assistance" and in subpar. (B) "described in subparagraph (A)" for "herein contained".

Subsec. (b)(4)(A). Pub. L. 100-399, §401(f)(3), substituted "subsection" for "section".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2016. Interest rates and other charges

(a) In general

Loans and discounts made by a Farm Credit Bank shall bear such rate or rates of interest or discount, and be on such terms and conditions, as may be determined by the board of directors of the bank from time to time.

(b) Setting rates and charges

In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable costs on a sound business basis taking into consideration

the cost of money to the bank, necessary reserve and expenses of the bank and associations, and providing services to members. The loan documents or discounting and financing agreements, may provide for the interest rate or rates to vary from time to time during the repayment period of the loan or agreement.

(Pub. L. 92–181, title I, §1.8, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1626; amended Pub. L. 100–399, title IV, §401(g), Aug. 17, 1988, 102 Stat. 996.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2016, Pub. L. 92–181, title I, §1.8, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §105, Dec. 24, 1980, 94 Stat. 3438, related to eligibility, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399 substituted "such rate or rates of interest or discount, and be" for "interest at a rate or rates, and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2017. Eligibility

The credit and financial services authorized in this subchapter may be made available to persons who are or become stockholders or members of the bank or associations in the district, and who are—

- (1) bona fide farmers, ranchers, or producers or harvesters of aquatic products;
- (2) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs; or
- (3) owners of rural homes.

(Pub. L. 92–181, title I, §1.9, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1626.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2017, Pub. L. 92–181, title I, §1.9, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §106, Dec. 24, 1980, 94 Stat. 3438; Pub. L. 100–233, title IV, §426, title VIII, §802(d), Jan. 6, 1988, 101 Stat. 1657, 1710; Pub. L. 100–399, title IV, §412, title VII, §701, Aug. 17, 1988, 102 Stat. 1004, 1006, related to security, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2018. Security; terms

(a) Real estate loans

(1) Maximum level of loans

(A) In general

Real estate mortgage loans originated by a Farm Credit Bank, or in which a Farm Credit Bank participates in with a lender that is not a System institution, shall not exceed 85 percent of the appraised value of the real estate security, except as provided for in subparagraphs (C) and (D).

(B) Regulation

The Farm Credit Administration may, by regulation, require that loans not exceed 75 percent of the appraised value of the real estate security.

(C) Guaranteed loans

If the loan is guaranteed by Federal, State, or other governmental agencies, the loan may not exceed 97 percent of the appraised value of the real estate security, as may be authorized under regulations of the Farm Credit Administration.

(D) Private mortgage insurance

A loan on which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate security to the extent that the loan amount in excess of such 85 percent is covered by the insurance.

(2) Security

All loans originated or participated in by a bank under this section shall be secured by first liens on interests in real estate of such classes as may be prescribed by regulations of the Farm Credit Administration.

(3) Value of security

To adequately secure the loan, the value of security shall be determined by appraisal under standards prescribed by the bank in accordance with regulations of the Farm Credit Administration.

(4) Additional security

Additional security for any loan may be required by the bank to supplement real estate security. Credit factors, other than the ratio between the amount of the loan and the security value, shall be given due consideration.

(b) Intermediate credit

Loans, other than real estate loans, and discounts made under the provisions of this subchapter shall be repayable in not more than 7 years (15 years if made to producers or harvesters of aquatic products) from the time that such are made or discounted by the Farm Credit Bank, except that the Board of Directors, under regulations of the Farm Credit Administration, may approve policies permitting loans, advances, or discounts (other than those made to producers or harvesters of aquatic products) to be repayable in not more than 10 years from the time that such are made or discounted by such bank.

(Pub. L. 92–181, title I, §1.10, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1627; amended Pub. L. 100–399, title IV, §401(h), (i), Aug. 17, 1988, 102 Stat. 996; Pub. L. 104–105, title II, §§202, 203, Feb. 10, 1996, 110 Stat. 172.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2018, Pub. L. 92-181, title I, §1.10, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96-592, title I, §107, Dec. 24, 1980, 94 Stat. 3438, related to purposes, prior to the general amendment of this subchapter by Pub. L. 100-233, §401.

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-105, §202(b), substituted "subparagraphs (C) and (D)" for "paragraphs (2) and (3)".

Subsec. (a)(1)(D). Pub. L. 104-105, §202(a), added subpar. (D).

Subsec. (a)(5). Pub. L. 104-105, §203, struck out heading and text of par. (5). Text read as follows: "Each Farm Credit Bank shall require a financial statement from each borrower at least once every 3 years, or during such shorter period of time as may be required under regulations of the Farm Credit Administration."

1988—Subsec. (a)(2). Pub. L. 100-399, §401(h)(1), substituted "prescribed by regulations of" for "approved by".

Subsec. (a)(3). Pub. L. 100-399, §401(h)(2), substituted "under standards" for "under appraisal standards" and "in accordance with regulations of" for "and approved by".

Subsec. (b). Pub. L. 100-399, §401(i), substituted "harvesters of aquatic products) from" for "harvester of aquatic products) from".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2019. Purposes for extensions of credit

(a) Agricultural or aquatic purposes

(1) In general

Loans made by a Farm Credit Bank to farmers, ranchers, and producers or harvesters of aquatic products may be for any agricultural or aquatic purpose and other credit needs of the applicant, including financing for basic processing and marketing directly related to the applicant's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products, except that the operations of the applicant shall supply some portion of the total processing or marketing for which financing is extended.

(2) Limitation on loans for basic processing and marketing operations

The aggregate of the financing provided by any Farm Credit Bank for basic processing and marketing directly related to the operations of farmers, ranchers, and producers or harvesters of aquatic products, if the operations of the applicant supply less than 20 percent of the total processing or marketing for which financing is extended, shall not exceed 15 percent of the total of all outstanding loans of such bank.

(b) Rural housing financing

(1) In general

Loans and discounts may be made to rural residents for rural housing financing under regulations of the Farm Credit Administration.

(2) Limitations

Rural housing financed under this subchapter shall be for single-family, moderate-priced dwellings and their appurtenances not inconsistent with the general quality and standards of

housing existing in, or planned or recommended for, the rural area where it is located, except that a Farm Credit Bank may not at any one time have a total amount of loans outstanding for such rural housing to persons other than farmers or ranchers in amounts exceeding 15 percent of the total of all loans outstanding in such bank.

(3) Rural areas

For rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants.

(c) Farm-related services

(1) In general

Loans to persons furnishing farm-related services to farmers and ranchers directly related to their on-farm operating needs may be made for the necessary capital structures and equipment and initial working capital for such services.

(2) Facilities

The banks may own and lease, or lease with option to purchase, to persons eligible for credit under this subchapter or subchapter II, equipment or facilities needed in the operations of such persons.

(Pub. L. 92–181, title I, §1.11, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1627; amended Pub. L. 100–399, title IV, §401(j), Aug. 17, 1988, 102 Stat. 996; Pub. L. 101–624, title XVIII, §1832(a), Nov. 28, 1990, 104 Stat. 3832; Pub. L. 102–237, title V, §502(a), Dec. 13, 1991, 105 Stat. 1868.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2019, Pub. L. 92–181, title I, §1.11, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §108, Dec. 24, 1980, 94 Stat. 3438, related to services related to borrower's operations, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–237 made technical amendments to headings of subsec. (a) and pars. (1) and (2).

1990—Subsec. (a). Pub. L. 101–624 designated existing provisions as par. (1), inserted heading, substituted "some portion" for "at least 20 percent, or such larger percent as may be required by the board of directors of the bank under regulations of the Farm Credit Administration," and added par. (2).

1988—Subsec. (c)(2). Pub. L. 100–399 substituted "this subchapter or subchapter II, equipment or facilities" for "this subchapter, facilities".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2020. Related services

(a) In general

The Farm Credit Banks may provide technical assistance to borrowers, members, and applicants from the bank and associations in the district, including persons obligated on paper discounted by the bank, and may make available to them at their option such financial related services appropriate to their on-farm and aquatic operations as determined to be feasible by the board of directors of the bank, under regulations of the Farm Credit Administration.

(b) Authority to pass along cost of insurance premiums

(1) In general

Each Farm Credit Bank may assess each production credit association, other association making direct loans under the authority provided under section 2279b of this title, and other financing institution described in section 2015(b)(1)(B) of this title in the district in which the bank is located to cover the costs of making premium payments under part E of subchapter V.

(2) Computation

The assessment on any association or other financing institution described in paragraph (1) for any period shall be computed in an equitable manner, as determined by the Corporation.

(Pub. L. 92–181, title I, §1.12, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1628; amended Pub. L. 100–399, title IV, §401(k), Aug. 17, 1988, 102 Stat. 996; Pub. L. 101–220, §6(b)(1), (2), Dec. 12, 1989, 103 Stat. 1880; Pub. L. 104–105, title II, §215(a)(2)(C), Feb. 10, 1996, 110 Stat. 176; Pub. L. 107–171, title V, §5403(a)(2)(A), May 13, 2002, 116 Stat. 350; Pub. L. 110–234, title V, §5401(a), May 22, 2008, 122 Stat. 1154; Pub. L. 110–246, §4(a), title V, §5401(a), June 18, 2008, 122 Stat. 1664, 1915.)

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.

PRIOR PROVISIONS

A prior section 2020, Pub. L. 92–181, title I, §1.12, Dec. 10, 1971, 85 Stat. 586; Pub. L. 96–592, title I, §109, Dec. 24, 1980, 94 Stat. 3439, related to loans through associations or agents, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–246, §5401(a), designated first sentence as par. (1), inserted heading, added par. (2), and struck out former second sentence which related to computation of the assessment on the same basis as is used to compute the premium payment and provided formula to calculate a maximum amount.

2002—Subsec. (b)(1). Pub. L. 107–171, §5403(a)(2)(A)(i), inserted "and Government Sponsored Enterprise-guaranteed loans (as defined in section 2277a–4(a)(4) of this title) provided for in paragraph (4)" after "government-guaranteed loans (as defined in section 2277a–4(a)(3) of this title) provided for in paragraph (3)".

Subsec. (b)(4). Pub. L. 107–171, §5403(a)(2)(A)(ii)–(iv), added par. (4).

1996—Pub. L. 104–105, §215(a)(2)(C), which directed amendment of "section 1.12(b)", without specifying the name of the Act being amended, was executed to this section, which is section 112 of the Farm Credit Act of 1971, to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 104–105, §215(a)(2)(C)(i), inserted "(as defined in section 2277a–4(a)(3) of this title)" after "government-guaranteed loans".

Subsec. (b)(3). Pub. L. 104–105, §215(a)(2)(C)(i), inserted "(as so defined)" after "government-guaranteed loans" in subpars. (A) and (B).

1989—Subsec. (b). Pub. L. 101–220, §6(b)(1), inserted ", other association making direct loans under the

authority provided under section 2279b of this title," after "production credit association".

Subsec. (b)(1). Pub. L. 101-220, §6(b)(2)(A), inserted "funded by or" before "discounted with" and "excluding the guaranteed portions of government-guaranteed loans provided for in paragraph (3)," and struck out "and" after "multiplied by 0.0015;"

Subsec. (b)(2). Pub. L. 101-220, §6(b)(2)(B), inserted "funded by or" before "discounted with" and substituted "0.0025; and" for "0.0025."

Subsec. (b)(3). Pub. L. 101-220, §6(b)(2)(C), added par. (3).

1988—Subsec. (a). Pub. L. 100-399 designated existing provision as subsec. (a), inserted heading, substituted "directors of the bank" for "directors of each district bank", and added subsec. (b).

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

Pub. L. 107-171, title V, §5403(b), May 13, 2002, 116 Stat. 351, provided that: "The amendments made by this section [amending this section and sections 2277a-4 and 2277a-5 of this title] shall apply 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."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-220, §6(c), Dec. 12, 1989, 103 Stat. 1880, provided that: "The amendments made by subsections (a) and (b) [amending sections 2020, 2277a-4, 2277a-8, and 2277a-10 of this title] shall be effective for insurance premiums due to the Farm Credit System Insurance Corporation under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) on or after January 1, 1990, based on the loan volume of each bank for each calendar year beginning with calendar year 1989, and shall be effective for the calculation of the initial premium payment required under section 5.56(c) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-5(c))."

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.

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2021. Loans through associations or agents

(a) In general

The Farm Credit Banks shall, except as otherwise herein provided, make loans of the type authorized under section 2015(a) of this title through a Federal land bank association chartered to serve the territory in which the real estate of the borrower is located.

(b) No active association

If there is no active association chartered to serve territory where the real estate is located, the bank may make the loan directly or through such bank or trust company or savings or other financial institution as such bank may designate.

(c) Purchase of stock required

When the loan is not made through a Federal land bank association, the applicant shall purchase stock in the bank in accordance with the capitalization requirements provided for in the bylaws of the bank.

(Pub. L. 92–181, title I, §1.13, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1628.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1.13 of Pub. L. 92–181 was classified to section 2031 of this title prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2022. Liens on stock

The Farm Credit Banks shall have a first lien on the stock or participation certificates it issues for the payment of any liability of the stockholders to the bank.

(Pub. L. 92–181, title I, §1.14, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1629.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1.14 of Pub. L. 92–181 was classified to section 2032 of this title prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2023. Taxation

The Farm Credit Banks and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Farm Credit Bank to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Farm Credit Banks and the notes, bonds, debentures, and other obligations issued by the banks shall be considered and held to be instrumentalities of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 U.S.C. 3124).

(Pub. L. 92–181, title I, §1.15, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1629; amended Pub. L. 100–399, title IV, §401(l), Aug. 17, 1988, 102 Stat. 997.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 1.15 of Pub. L. 92–181 was classified to section 2033 of this title prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2031, Pub. L. 92–181, title I, §1.13, Dec. 10, 1971, 85 Stat. 587; Pub. L. 99–205, title II, §205(d)(4), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 100–233, title VIII, §802(e), Jan. 6, 1988, 101 Stat. 1710, related to organizations, articles, and charters of Federal land bank associations, and powers of Farm Credit Administration, prior to the general amendment of this subchapter by Pub. L. 100–233, §401. See section 2011 of this title.

A prior section 2032, Pub. L. 92–181, title I, §1.14, Dec. 10, 1971, 85 Stat. 587, related to board of directors, prior to the general amendment of this subchapter by Pub. L. 100–233, §401. See section 2012 of this title.

A prior section 2033, Pub. L. 92–181, title I, §1.15, Dec. 10, 1971, 85 Stat. 587; Pub. L. 96–592, title I, §110, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title II, §205(d)(5), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VII, §705(b), title VIII, §805(b), Jan. 6, 1988, 101 Stat. 1707, 1715; Pub. L. 100–399, title VI, §604, title VII, §702(a), Aug. 17, 1988, 102 Stat. 1006, related to general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100–233, §401. See section 2013 of this title.

A prior section 2034, Pub. L. 92–181, title I, §1.16, Dec. 10, 1971, 85 Stat. 589; Pub. L. 96–592, title I, §111, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title III, §304(a), Dec. 23, 1985, 99 Stat. 1708, related to association stock, value of shares, voting, and purchase, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2051, Pub. L. 92–181, title I, §1.17, Dec. 10, 1971, 85 Stat. 589; Pub. L. 96–592, title I, §112, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title II, §205(d)(6), title VI, §602, Dec. 23, 1985, 99 Stat. 1704, 1711; Pub. L. 100–233, title VIII, §802(f), Jan. 6, 1988, 101 Stat. 1711, related to land bank reserves, dividends, and patronage refunds, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2052, Pub. L. 92–181, title I, §1.18, Dec. 10, 1971, 85 Stat. 589; Pub. L. 96–592, title I, §113, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title VI, §603, Dec. 23, 1985, 99 Stat. 1711; Pub. L. 100–233, title VIII, §802(g), Jan. 6, 1988, 101 Stat. 1711, related to association reserves, dividends, and patronage refunds, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2053, Pub. L. 92–181, title I, §1.19, Dec. 10, 1971, 85 Stat. 590; Pub. L. 96–592, title I, §114, Dec. 24, 1980, 94 Stat. 3439, related to agreements for sharing gains or losses, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2054, Pub. L. 92–181, title I, §1.20, Dec. 10, 1971, 85 Stat. 590; Pub. L. 96–592, title I, §115, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99–205, title II, §205(d)(7), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VIII, §805(c), Jan. 6, 1988, 101 Stat. 1715, related to liens on stock and participation certificates, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2055, Pub. L. 92–181, title I, §1.21, Dec. 10, 1971, 85 Stat. 590; Pub. L. 100–399, title IX, §901(a), Aug. 17, 1988, 102 Stat. 1007, related to tax exempt status, prior to the general amendment of this subchapter by Pub. L. 100–233, §401. See section 2023 of this title.

AMENDMENTS

1988—Pub. L. 100–399 inserted a comma after "therefrom" and substituted "3124" for "742(a)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

SUBCHAPTER II—FARM CREDIT ASSOCIATIONS

EDITORIAL NOTES

CODIFICATION

Title II of the Farm Credit Act of 1971, comprising this subchapter, was originally enacted by Pub. L. 92–181, title II, Dec. 10, 1971, 85 Stat. 590, and amended by Pub. L. 95–443, Oct. 10, 1978, 92 Stat. 1066; Pub. L. 96–592, Dec. 24, 1980, 94 Stat. 3437; Pub. L. 99–205, Dec. 23, 1985, 99 Stat. 1678; Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1874; Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568. Such title is shown herein, however, as having been added by Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 100–233.

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1629, substituted "Farm Credit Associations" for "Federal Intermediate Credit Banks and Production Credit Associations" as subchapter heading.

PART A—PRODUCTION CREDIT ASSOCIATIONS

EDITORIAL NOTES

CODIFICATION

1988—Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1629, substituted "Production Credit Associations" for "Federal Intermediate Credit Banks" as part A heading.

§2071. Organization and charters

(a) Charter

Each production credit association shall continue as a Federally chartered instrumentality of the United States.

(b) Organization

(1) In general

Production credit associations may be organized by 10 or more farmers or ranchers or producers or harvesters of aquatic products desiring to borrow money under the provisions of this part.

(2) Articles of association

The proposed articles of association shall be forwarded to the Farm Credit Bank for the district accompanied by an agreement to subscribe on behalf of the association for stock in the bank in such amounts as may be required by the bank.

(3) Contents of articles

The articles shall specify in general terms the—

- (A) objects for which the association is formed;
- (B) powers to be exercised by the association in carrying out the functions authorized by this part; and
- (C) territory the association proposes to serve.

(4) Signatures

The articles shall be signed by persons desiring to form such an association and shall be accompanied by a statement signed by each such person establishing eligibility to borrow from the association in which such person will become a stockholder.

(5) Copy to FCA

A copy of the articles of association shall be forwarded to the Farm Credit Administration with the recommendations of the bank concerning the need for such an association in order to adequately serve the credit needs of eligible persons in the proposed territory and whether that territory includes any area described in the charter of another production credit association.

(6) Denial of charter

The Farm Credit Administration for good cause shown may deny the charter.

(7) Approval of articles

On approval of the proposed articles by the Farm Credit Administration, and on the issuance of a charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(8) Powers of FCA

The Farm Credit Administration shall have the power, under rules and regulations prescribed by the Farm Credit Administration or by prescribing in the terms of the charter, to—

- (A) provide for the organization of the association;
- (B) provide for the initial amount of stock of the association;
- (C) provide for the territory within which the association's operations may be carried on; and
- (D) approve amendments to the charter of the association.

(Pub. L. 92–181, title II, §2.0, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1629; amended Pub. L. 100–399, title IV, §401(m), Aug. 17, 1988, 102 Stat. 997; Pub. L. 102–237, title V, §502(b), Dec. 13, 1991, 105 Stat. 1868.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2071, Pub. L. 92–181, title II, §2.0, Dec. 10, 1971, 85 Stat. 590; Pub. L. 100–233, title VIII, §802(h), Jan. 6, 1988, 101 Stat. 1711, related to establishment and branches of Federal intermediate credit banks, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1991—Subsec. (b)(8). Pub. L. 102–237 substituted "charter, to" for "charter to" in introductory provisions.

1988—Subsec. (b)(1). Pub. L. 100–399, §401(m)(1), substituted "this part" for "this subchapter".

Subsec. (b)(3)(B). Pub. L. 100–399, §401(m)(2), (3), struck out "the" before "powers" and substituted "this subtitle" for "this part", both of which for purposes of codification were translated as "this part", requiring no change in text.

Subsec. (b)(3)(C). Pub. L. 100–399, §401(m)(3), struck out "the" before "territory".

Subsec. (b)(8). Pub. L. 100–399, §401(m)(4), struck out in introductory provision "or by approval of bylaws of the association" after "the charter" and amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "direct at any time such changes in the charter as the Farm Credit Administration finds necessary for the accomplishment of the purposes of this chapter".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

MERGER OF PRODUCTION CREDIT ASSOCIATIONS AND FEDERAL LAND BANK ASSOCIATIONS

Pub. L. 100-233, title IV, §411, Jan. 6, 1988, 101 Stat. 1638, as amended by Pub. L. 100-399, title IV, §403, Aug. 17, 1988, 102 Stat. 999, provided that:

"(a) SUBMISSION OF PROPOSAL.—Not later than 6 months after the date of the merger of the Federal land bank and the Federal intermediate credit bank in a district, the Boards of Directors of each Federal land bank association and each production credit association in such district, that share substantially the same geographical territory with each other, shall submit to the voting stockholders of each such association for their approval, a plan, approved by the supervising bank and the Farm Credit Administration, for merging such associations.

"(b) PREREQUISITES TO MERGER.—

"(1) STOCKHOLDER VOTE.—The stockholder vote required for approval of a merger under subsection (a) shall be a majority of the voting stockholders of each association voting, in person or by written proxy, at a duly authorized stockholders meeting.

"(2) SUBMISSION TO FCA.—Not later than 60 days prior to the end of the 12-month period beginning on the date of the enactment of this section [Jan. 6, 1988], the plan of merger under subsection (a), together with all information to be presented to the stockholders, shall be submitted to the Farm Credit Administration.

"(3) EXPEDITED CONSIDERATION BY FCA.—The Farm Credit Administration shall expedite its consideration of the plan and accompanying information submitted under paragraph (2) so that review and approval of such plan and information shall be completed by the Administration so as to enable a stockholder vote to occur within the 12-month period referred to in paragraph (2).

"(c) DIRECT LENDERS.—On approval of a merger under this subsection, the resulting association shall be a direct lender in the same manner as applies to production credit associations."

REASSIGNMENT OF ASSOCIATIONS TO ADJOINING DISTRICTS

Pub. L. 100-233, title IV, §433, Jan. 6, 1988, 101 Stat. 1662, as amended by Pub. L. 100-399, title IV, §417, Aug. 17, 1988, 102 Stat. 1004, provided that:

"(a) PETITION OF BANK.—Notwithstanding any other provision of law, effective for the 12-month period beginning on the date of enactment of this Act [Jan. 6, 1988], each Federal land bank association or production credit association, whose chartered territory adjoins the territory of another district, may petition the Farm Credit Administration to amend the charters of the association and the adjoining district bank to provide that the territory of the association is part of the adjoining district.

"(b) REQUIREMENTS OF PETITION.—To be considered under this section, the petition must be signed by not less than 15 percent of the stockholders of the association. Only one such petition may be filed by an association under this section.

"(c) FCA ACTION.—The Farm Credit Administration shall take any action necessary—

"(1) to amend the charters of the association and the district bank; and

"(2) to incorporate the petitioning association into the adjoining district if the reassignment is approved by—

"(A) a majority of the stockholders of the association voting, in person or by proxy, at a duly authorized stockholders' meeting held for such purpose;

"(B) the board of directors of the adjoining district bank;

"(C) the Farm Credit System Assistance Board; and

"(D) the Farm Credit Administration Board."

§2072. Board of directors

Each production credit association shall elect from the voting members of such association, a board of directors of such number, for such terms, with such qualifications, and in such manner as may be required by the bylaws of the association, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, stockholder, or agent of a System institution.

(Pub. L. 92-181, title II, §2.1, as added Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1630; amended Pub. L. 100-399, title IV, §401(n), Aug. 17, 1988, 102 Stat. 997; Pub. L. 102-237, title V, §502(c), Dec. 13, 1991, 105 Stat. 1868.)

PRIOR PROVISIONS

A prior section 2072, Pub. L. 92-181, title II, §2.1, Dec. 10, 1971, 85 Stat. 591; Pub. L. 96-592, title II, §201, Dec. 24, 1980, 94 Stat. 3439; Pub. L. 99-205, title II, §205(e)(1), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100-233, title VII, §705(c), title VIII, §§802(i), 805(d), Jan. 6, 1988, 101 Stat. 1707, 1711, 1715; Pub. L. 100-399, title VI, §604, title IX, §901(b), Aug. 17, 1988, 102 Stat. 1006, 1007, related to corporate existence and general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100-233, §401.

AMENDMENTS

1991—Pub. L. 102-237 substituted "stockholder, or agent" for "or stockholder".

1988—Pub. L. 100-399 struck out the comma after "except that".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided in part that this section is effective 6 months after Jan. 6, 1988.

§2073. General corporate powers

Each production credit association shall be a body corporate and, subject to supervision by the Farm Credit Bank for the district and regulation by the Farm Credit Administration, shall have the power to—

(1) have succession until terminated in accordance with this chapter or any other Act of Congress;

(2) adopt and use a corporate seal;

(3) make contracts;

(4) sue and be sued;

(5) acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to the business of the association;

(6) operate under the direction of the board of directors of the association in accordance with the provisions of this chapter;

(7) subscribe to stock of the bank;

(8) purchase stock of the bank held by other production credit associations and stock of other production credit associations;

(9) contribute to the capital of the bank or other production credit associations;

(10) invest funds of the association as may be approved by the Farm Credit Bank under regulations of the Farm Credit Administration and deposit the current funds and securities of such with the Farm Credit Bank, a member bank of the Federal Reserve System, or any bank insured under the Federal Deposit Insurance Corporation, and may pay fees therefor and receive interest thereon as may be agreed;

(11) buy and sell obligations of or insured by the United States or of any agency thereof or of any banks of the Farm Credit System and buy from and sell to such banks, interests in loans and in other financial assistance extended and nonvoting stock, as may be authorized by the Farm Credit Bank in accordance with regulations of the Farm Credit Administration;

(12) borrow money from the Farm Credit Bank, and with the approval of such bank, borrow from and issue notes or other obligations to any commercial bank or other financial institution;

(13) make and participate in loans, accept advance payments, and provide services and other assistance as authorized in this part and charge fees therefor, and when authorized by the bank participate with one or more other Farm Credit System institutions in loans made under this

subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title;

(14) endorse and become liable on loans discounted or pledged to the Farm Credit Bank;

(15) as may be authorized by the Farm Credit Bank in accordance with regulations of the Farm Credit Administration, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose;

(16) prescribe, by its board of directors, its bylaws that shall be consistent with law, and that shall provide for—

(A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired; and

(B) the manner in which it is to—

(i) select officers and employees;

(ii) acquire, hold, and transfer property;

(iii) conduct general business; and

(iv) exercise and enjoy the privileges granted to it by law;

(17) provide by its board of directors for a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this chapter, define their duties, and require surety bonds or make other provisions against losses occasioned by employees, but no director shall, within one year after the date when such director ceases to be a member of the board, serve as a salaried employee of the association on the board of which he served;

(18) elect by the board of directors of the association a loan committee with power to approve applications for membership in the association and loans or participations or, with the approval of the bank, delegate the approval of applications for membership and loans or participations within specified limits to other committees or to authorized officers and employees of the association;

(19) perform any functions delegated to the association by the bank;

(20) exercise by the board of directors or authorized officers or employees of the association, all such incidental powers as may be necessary or expedient to carry on the business of the association; and

(21) operate as an originator and become certified as a certified facility under subchapter VIII.

(Pub. L. 92–181, title II, §2.2, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1630; amended Pub. L. 100–399, title IV, §401(o), Aug. 17, 1988, 102 Stat. 997.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2073, Pub. L. 92–181, title II, §2.2, Dec. 10, 1971, 85 Stat. 592; Pub. L. 96–592, title II, §202, Dec. 24, 1980, 94 Stat. 3440; Pub. L. 99–205, title II, §205(e)(2)–(5), title VI, §604, Dec. 23, 1985, 99 Stat. 1704, 1711; Pub. L. 100–233, title VIII, §§802(j), 805(e), Jan. 6, 1988, 101 Stat. 1711, 1715, related to Federal intermediate credit bank stock, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Par. (16). Pub. L. 100–399, §401(o)(1), amended par. (16) generally. Prior to amendment, par. (16) read as follows: "prescribe by the board of directors of the association the bylaws not inconsistent with law providing for—

"(A) the classes of association stock and the manner in which the stock shall be issued, transferred, and retired;

"(B) the officers and employees elected or provided for;

"(C) the property acquired, held, and transferred by the association; and

"(D) the general business conducted, and the privileges granted to the association by law exercised and enjoyed;"

Par. (17). Pub. L. 100–399, §401(o)(2), substituted "provide by its board of directors for" for "elect by the board of directors of the association" and "serve as" for "be elected or designated".

Par. (21). Pub. L. 100–399, §401(o)(3)–(5), added par. (21).

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided in part that this section is effective 6 months after Jan. 6, 1988.

§2074. Production credit association capitalization

(a) In general

In accordance with section 2154a of this title, each production credit association shall provide, through its bylaws and subject to Farm Credit Administration regulations, for its capitalization and the manner in which its stock shall be issued, held, transferred, and retired and, except as provided in subsection (b), its earnings distributed.

(b) Application of earnings

At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in accordance with generally accepted accounting principles)—

- (1) first, to the restoration of the impairment (if any) of capital; and
- (2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.

(c) Patronage

When the bylaws of an association so provide and subject to the general directions of the Farm Credit Administration, available net earnings at the end of any fiscal year may be distributed on a patronage basis in stock, participation certificates, or in cash. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

(Pub. L. 92–181, title II, §2.3, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1632; amended Pub. L. 102–552, title V, §501, Oct. 28, 1992, 106 Stat. 4129.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2074, Pub. L. 92–181, title II, §2.3, Dec. 10, 1971, 85 Stat. 593; Pub. L. 96–592, title II, §203, Dec. 24, 1980, 94 Stat. 3440; Pub. L. 99–205, title II, §205(e)(6), Dec. 23, 1985, 99 Stat. 1704, related to loans, discounts, participation, and leasing, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–552 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Each production credit association at the end of each fiscal year shall apply the amount of the earnings of the association for such year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in an amount equal to one-half of 1 percent of the loans outstanding at the end of the fiscal year to the extent that such earnings in such year in excess of other operating expenses permit, or in such greater amounts as are deemed necessary under generally accepted accounting principles, until such reserves equal or exceed 3½ percent of the loans outstanding at the end of the fiscal year, beyond which 3½ percent further additions to such reserves may be made, if deemed necessary

under generally accepted accounting principles) first to the restoration of the impairment, if any, of capital, and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2075. Short- and intermediate-term loans; participation; other financial assistance; terms; conditions; interest; security

(a) Short- and intermediate-term loans

Each production credit association, under standards prescribed by the board of directors of the Farm Credit Bank of the district, may make, guarantee, or participate with other lenders in short- and intermediate-term loans and other similar financial assistance to—

(1) bona fide farmers and ranchers and the producers or harvesters of aquatic products, for agricultural or aquatic purposes and other requirements of such borrowers, including financing for basic processing and marketing directly related to the operations of the borrower and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products, except that the operations of the borrower shall supply some portion of the total processing or marketing for which financing is extended, except that the aggregate of the financing provided by any association for basic processing and marketing directly related to the operations of farmers, ranchers, and producers or harvesters of aquatic products, if the operations of the applicant supply less than 20 percent of the total processing or marketing for which financing is extended, shall not exceed 15 percent of the total of all outstanding loans of all associations in the district at the end of its preceding fiscal year;

(2) rural residents for housing financing in rural areas, under regulations of the Farm Credit Administration; and

(3) persons furnishing to farmers and ranchers farm-related services directly related to their on-farm operating needs.

(b) Rural housing

(1) In general

Rural housing financed under this part shall be for single-family, moderate-priced dwellings and the appurtenances of such not inconsistent with the general quality and standards of housing existing in, or planned or recommended for, the rural area where it is located.

(2) Limitation

The aggregate of such housing loans in an association to persons other than farmers or ranchers shall not exceed 15 percent of the outstanding loans at the end of its preceding fiscal year except on prior approval by the Farm Credit Bank of the district. The aggregate of such housing loans in any farm credit district shall not exceed 15 percent of the outstanding loans of all associations in the district at the end of the preceding fiscal year.

(3) Rural areas

For rural housing purposes under this section the term "rural areas" shall not be defined to include any city or village having a population in excess of 2,500 inhabitants.

(4) Equipment

Each association may own and lease, or lease with option to purchase, to stockholders of the association equipment needed in the operations of the stockholder.

(c) Interest rates and charges

(1) In general

Loans authorized in subsection (a) shall bear such rate or rates of interest as are determined under standards prescribed by the board of the bank subject to the provisions of section 2205 of this title, and shall be made upon such terms, conditions, and upon such security, if any, as shall be authorized in such standards.

(2) Setting of rates

In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the association, necessary reserves and expenses of the association, and services provided to borrowers and members.

(3) Varying rates

The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan in accordance with the rate or rates currently being charged by the association.

(4) Prior approval

Such standards may require prior approval of the bank on certain classes of loans, and may authorize a continuing commitment to a borrower of a line of credit.

(Pub. L. 92–181, title II, §2.4, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1632; amended Pub. L. 100–399, title IV, §401(p), (q), Aug. 17, 1988, 102 Stat. 997; Pub. L. 101–624, title XVIII, §1832(b), Nov. 28, 1990, 104 Stat. 3832; Pub. L. 115–334, title V, §5411(3), Dec. 20, 2018, 132 Stat. 4679.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2075, Pub. L. 92–181, title II, §2.4, Dec. 10, 1971, 85 Stat. 594; Pub. L. 95–443, Oct. 10, 1978, 92 Stat. 1066; Pub. L. 96–592, title II, §204, Dec. 24, 1980, 94 Stat. 3441; Pub. L. 99–509, title I, §1033(b), Oct. 21, 1986, 100 Stat. 1877, related to terms, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–334 struck out subsec. (d) which described a special rule for providing credit and technical assistance in a district containing only two production credit associations.

1990—Subsec. (a)(1). Pub. L. 101–624 substituted "some portion of the total processing or marketing for which financing is extended, except that the aggregate of the financing provided by any association for basic processing and marketing directly related to the operations of farmers, ranchers, and producers or harvesters of aquatic products, if the operations of the applicant supply less than 20 percent of the total processing or marketing for which financing is extended, shall not exceed 15 percent of the total of all outstanding loans of all associations in the district at the end of its preceding fiscal year" for "at least 20 percent, or such larger percent as is required by the supervising bank under regulations of the Farm Credit Administration, of the total processing or marketing for which financing is extended".

1988—Subsec. (b)(1). Pub. L. 100–399, §401(p), substituted "this part" for "this subchapter" and substituted "or planned" for "planned".

Subsec. (d). Pub. L. 100–399, §401(q), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2076. Other services

Each production credit association may provide technical assistance to borrowers, applicants, and members and may make available to them at their option such financial related services appropriate to their on-farm and aquatic operations as is determined feasible by the board of directors of each Farm Credit Bank, under regulations prescribed by the Farm Credit Administration.

(Pub. L. 92–181, title II, §2.5, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1633.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2076, Pub. L. 92–181, title II, §2.5, Dec. 10, 1971, 85 Stat. 595; Pub. L. 96–592, title II, §205, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 100–233, title III, §305, Jan. 6, 1988, 101 Stat. 1621, related to services related to borrowers' operations, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2076a. Liens on stock

Except with regard to stock or participation certificates held by other Farm Credit System institutions, each production credit association shall have a first lien on stock and participation certificates the association issues, on allocated surplus, and on investments in equity reserve, for any indebtedness of the holder of the capital investments and, in the case of equity reserves, for charges for association losses in excess of reserves and surpluses.

(Pub. L. 92–181, title II, §2.6, as added Pub. L. 101–624, title XVIII, §1833(2), Nov. 28, 1990, 104 Stat. 3832.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2.6 of Pub. L. 92–181 was renumbered section 2.7 and is classified to section 2077 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 7, 1988, see section 1861(d) of Pub. L. 101–624, set out as an Effective Date of 1990 Amendment note under section 2001 of Title 7, Agriculture.

§2077. Taxation

Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder.

(Pub. L. 92–181, title II, §2.7, formerly §2.6, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1633; amended Pub. L. 100–399, title IV, §401(r), Aug. 17, 1988, 102 Stat. 998; renumbered §2.7, Pub. L. 101–624, title XVIII, §1833(1), Nov. 28, 1990, 104 Stat. 3832.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2077, Pub. L. 92–181, title II, §2.6, Dec. 10, 1971, 85 Stat. 595; Pub. L. 96–592, title II, §206, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, §205(e)(7), (8), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VIII, §§802(k), 805(f), Jan. 6, 1988, 101 Stat. 1711, 1715, related to net earnings, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2078, Pub. L. 92–181, title II, §2.7, Dec. 10, 1971, 85 Stat. 597; Pub. L. 99–205, title II, §205(e)(9), Dec. 23, 1985, 99 Stat. 1704, related to distribution of assets on liquidation, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2079, Pub. L. 92–181, title II, §2.8, Dec. 10, 1971, 85 Stat. 597; Pub. L. 100–399, title IX, §901(a), Aug. 17, 1988, 102 Stat. 1007, related to taxation, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Pub. L. 100–399 substituted "interest," for "interest" and inserted ", except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

PART B—FEDERAL LAND BANK ASSOCIATIONS

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1634, substituted "Federal Land Bank Associations" for "Production Credit Associations" as part B heading.

§2091. Organizations; articles; charters; powers of the Farm Credit Administration

(a) Charter

Each Federal land bank association shall continue as a federally chartered instrumentality of the United States.

(b) Organization

(1) In general

A Federal land bank association may be organized by any group of 10 or more persons desiring to borrow money from a Farm Credit Bank under section 2015(a) of this title, including persons to whom the Farm Credit Bank has made a loan directly or through an agent and has taken as security real estate located in the territory proposed to be served by the association.

(2) Articles of association

(A) Description of territory

The articles of association shall describe the territory within which the association proposes to carry on its operations.

(B) Submission to FCB

Proposed articles shall be forwarded to the Farm Credit Bank for the district, accompanied by an agreement to subscribe on behalf of the association for stock in accordance with the bylaws of the Farm Credit Bank.

(C) Stock purchase

Association stock may be paid for by surrendering for cancellation stock in the bank held by a borrower and the issuance of an equivalent amount of stock to such borrower in the association.

(D) Statement

The articles shall be accompanied by a statement signed by each of the members of the proposed association establishing—

- (i) the individual's eligibility and request for a Farm Credit Bank loan;
- (ii) that the real estate with respect to which the individual desires the loan for is not being served by another Federal land bank association; and
- (iii) that the individual is or will become a stockholder in the proposed association.

(E) Submission to FCA

A copy of the articles of association shall be forwarded to the Farm Credit Administration with the recommendations of the bank concerning the need for the proposed association in order to adequately serve the credit needs of eligible persons in the proposed territory and a statement as to whether or not the territory includes any territory described in the charter of another Federal land bank association.

(3) Denials of charters

The Farm Credit Administration for good cause shown may deny the charter applied for.

(4) Approval of articles

On the approval of the proposed articles by the Farm Credit Administration and the issuance of such charter, the association shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(c) FCA authority on organization

The Farm Credit Administration shall have power, in the terms of the charter, under rules and regulations prescribed by the Farm Credit Administration—

- (1) to provide for the organization of the association;
- (2) to provide for the initial amount of stock of the association;
- (3) to provide for the territory within which the association may carry on its operations; and
- (4) to approve amendments to the charter of such association.

(Pub. L. 92-181, title II, §2.10, as added Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat.

1634; amended Pub. L. 100–399, title IV, §401(s), (t), Aug. 17, 1988, 102 Stat. 998.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2091, Pub. L. 92–181, title II, §2.10, Dec. 10, 1971, 85 Stat. 597; Pub. L. 96–592, title II, §207, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, §205(e)(10), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100–233, title VIII, §§802(l), 805(g), Jan. 6, 1988, 101 Stat. 1711, 1715, related to organization and charters of production credit associations, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–399, §401(s)(1), inserted "under section 2015(a) of this title" after "a Farm Credit Bank".

Subsec. (b)(2)(D)(i). Pub. L. 100–399, §401(s)(2), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the individual's eligibility for, and request or need of the individual of a Farm Credit Bank loan;"

Subsec. (c). Pub. L. 100–399, §401(t), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Farm Credit Administration shall have power, in the terms of the charter, under rules and regulations prescribed by the Farm Credit Administration or by approving the bylaws of the association, to provide for the—

"(1) organization of the association;

"(2) the initial amount of stock of such association;

"(3) the territory within which the operations of the association may be carried on; and

"(4) to direct at any time changes in the charter of such association as the Farm Credit Administration finds necessary in accomplishing the purposes of this chapter."

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2092. Board of directors

Each Federal land bank association shall elect from its voting shareholders a board of directors of such number, for such terms, in such manner, and with such qualifications as may be required by its bylaws except that, at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, stockholder, or agent of a System institution.

(Pub. L. 92–181, title II, §2.11, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1635; amended Pub. L. 102–237, title V, §502(d), Dec. 13, 1991, 105 Stat. 1868.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2092, Pub. L. 92–181, title II, §2.11, Dec. 10, 1971, 85 Stat. 598, related to board of directors, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

AMENDMENTS

1991—Pub. L. 102–237 substituted "stockholder, or agent" for "or stockholder".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2093. General corporate powers

Each Federal land bank association shall be a body corporate and, subject to supervision of the Farm Credit Bank for the district and the regulation of the Farm Credit Administration, shall have the power to—

- (1) adopt and use a corporate seal;
- (2) have succession until dissolved under the provisions of this chapter or other Act of Congress;
- (3) make contracts;
- (4) sue and be sued;
- (5) acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real estate and personal property necessary or convenient to the business of the association;
- (6) operate under the direction of the board of directors of the association in accordance with this chapter;
- (7) provide by its board of directors for a manager or other chief executive officer, and provide for such other officers or employees as may be necessary, including joint employees as provided in this chapter, define the duties of such, and require surety bonds or make other provision against losses occasioned by employees, except that no director shall, within one year after the date when such director ceases to be a member of the board, serve as a salaried employee of the association on the board of which such director served;
- (8) prescribe, by its board of directors, its bylaws that shall be consistent with law, and that shall provide for—
 - (A) the classes of its stock and the manner in which such stock shall be issued, transferred, and retired; and
 - (B) the manner in which it is to—
 - (i) select officers and employees;
 - (ii) acquire, hold, and transfer property;
 - (iii) conduct general business; and
 - (iv) exercise and enjoy the privileges granted to it by law;
- (9) accept applications for Farm Credit Bank loans and receive from such bank and disburse to the borrowers the proceeds of such loans;
- (10) subscribe to stock of the Farm Credit Bank of the district;
- (11) elect by its board of directors a loan committee with power to elect applicants for membership in the association and recommend loans to the Farm Credit Bank, or with the approval of the Farm Credit Bank, delegate the election of applicants for membership and the approval of loans within specified limits to other committees or to authorized employees of the association;
- (12) on agreement with the bank, take such additional actions with respect to applications and loans and perform such functions as are vested by law in the Farm Credit Banks as may be agreed to by the association;
- (13) endorse and become liable to the bank on loans it makes to association members;
- (14) receive such compensation and deduct such sums from loan proceeds with respect to each loan as may be agreed between the association and the bank and make such other charges for services as may be approved by the bank;
- (15) provide technical assistance to members, borrowers, applicants, and other eligible persons

and make available to them, at their option, such financial related services appropriate to their operations as it determines, with Farm Credit Bank approval, are feasible, under regulations of the Farm Credit Administration;

(16) borrow money from the bank and, with the approval of such bank, borrow from and issue association notes or other obligations to any commercial bank or other financial institution;

(17) buy and sell obligations of or insured by the United States or any agency thereof or of any banks of the Farm Credit System;

(18) invest association funds in such obligations as may be authorized in regulations of the Farm Credit Administration and approved by the bank and deposit securities and current funds of the association with any member bank of the Federal Reserve System, with the Farm Credit Bank, or with any bank insured by the Federal Deposit Insurance Corporation, and pay fees therefor and receive interest thereon as may be agreed;

(19) perform such other function delegated to the association by the Farm Credit Bank of the district;

(20) exercise by its board of directors or authorized officers or agents all such incidental powers as may be necessary or expedient in the conduct of its business;

(21) contribute to the capital of the bank; and

(22) operate as an originator and become certified as a certified facility under subchapter VIII.

(Pub. L. 92-181, title II, §2.12, as added Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1635; amended Pub. L. 100-399, title IV, §401(u), Aug. 17, 1988, 102 Stat. 998.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2093, Pub. L. 92-181, title II, §2.12, Dec. 10, 1971, 85 Stat. 598; Pub. L. 96-592, title II, §208, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99-205, title II, §205(e)(11), Dec. 23, 1985, 99 Stat. 1704; Pub. L. 100-233, title VII, §705(d), Jan. 6, 1988, 101 Stat. 1707; Pub. L. 100-399, title VI, §604, Aug. 17, 1988, 102 Stat. 1006, related to general corporate powers, prior to the general amendment of this subchapter by Pub. L. 100-233, §401.

AMENDMENTS

1988—Par. (7). Pub. L. 100-399, §401(u)(1), substituted "provide by its board of directors for" for "elect by its board of directors" and "serve as" for "be elected or designated".

Par. (8). Pub. L. 100-399, §401(u)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: "prescribe by its board of directors, association bylaws, not inconsistent with law, providing for the classes of association stock and the manner in which such stock shall be issued, transferred, and retired; the officers and employees of the association elected or provided for, the property of the association that is acquired, held, and transferred, the general business of the association conducted, and the privileges granted to the association by law exercised and enjoyed;"

Par. (12). Pub. L. 100-399, §401(u)(3), substituted "agreed to by" for "agreed to or delegated to".

Par. (22). Pub. L. 100-399, §401(u)(4)-(6), added par. (22).

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2094. Federal land bank association capitalization

In accordance with section 2154a of this title, the Federal land bank association shall provide, through its bylaws and subject to Farm Credit Administration regulations, for its capitalization and the manner in which its stock shall be issued, held, transferred, and retired and its earnings distributed.

(Pub. L. 92–181, title II, §2.13, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1636.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2094, Pub. L. 92–181, title II, §2.13, Dec. 10, 1971, 85 Stat. 599; Pub. L. 96–592, title II, §209, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99–205, title II, §205(e)(12)–(14), title III, §304(b), Dec. 23, 1985, 99 Stat. 1705, 1708; Pub. L. 100–233, title VIII, §805(h), Jan. 6, 1988, 101 Stat. 1715, related to stock and participation certificates, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2095. Repealed. Pub. L. 100–399, title IV, §401(v), Aug. 17, 1988, 102 Stat. 999

Section, Pub. L. 92–181, title II, §2.14, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1636, provided that whenever any Federal land bank association was liquidated, a sum equal to its reserve account as required in this chapter was to be paid and become the property of the bank in which such association was a shareholder.

A prior section 2095, Pub. L. 92–181, title II, §2.14, Dec. 10, 1971, 85 Stat. 600; Pub. L. 99–205, title II, §205(e)(15), title VI, §605, Dec. 23, 1985, 99 Stat. 1705, 1711, related to application of earnings, restoration of capital impairment, and surplus account, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONSTRUCTION OF REPEAL

Pub. L. 100–399, title IV, §401(v), Aug. 17, 1988, 102 Stat. 999, repealed this section and provided that this chapter be applied and administered as if this section had not been enacted.

§2096. Agreements for sharing gains or losses

Each Farm Credit Bank may enter into agreements with Federal land bank associations in its district for sharing the gain or losses on loans or on security held therefor or acquired in liquidation thereof, and associations are authorized to enter into any such agreements and also, subject to bank approval, agreements with other associations in the district for sharing the risk of loss on loans endorsed by each such association. As may be authorized by the bank in accordance with regulations of the Farm Credit Administration, associations also may enter into agreements with other Farm Credit System institutions to share loan and other losses, whether to protect against capital impairment or for any other purpose.

(Pub. L. 92–181, title II, §2.14, formerly §2.15, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1636; renumbered §2.14, Pub. L. 100–399, title IV, §401(w), Aug. 17, 1988, 102 Stat. 999.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2096, Pub. L. 92-181, title II, §2.15, Dec. 10, 1971, 85 Stat. 601; Pub. L. 96-592, title II, §210, Dec. 24, 1980, 94 Stat. 3442; Pub. L. 99-205, title II, §205(b), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 100-233, title IV, §431(f), title VIII, §805(i), Jan. 6, 1988, 101 Stat. 1660, 1715; Pub. L. 100-399, title IV, §415(b), Aug. 17, 1988, 102 Stat. 1004, related to short- and intermediate-term loans, participation, other financial assistance, terms, conditions, interest, and security, prior to the general amendment of this subchapter by Pub. L. 100-233, §401.

A prior section 2.14 of Pub. L. 92-181 was classified to section 2095 of this title and was repealed by Pub. L. 100-399, §401(v).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2097. Liens on stock

Each Federal land bank association shall have a first lien on the stock and participation certificates it issues, except on stock or participation certificates held by other Farm Credit System institutions, for the payment of any liability of the stockholder to the association or to the bank, or to both of them.

(Pub. L. 92-181, title II, §2.15, formerly §2.16, as added Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1637; renumbered §2.15, Pub. L. 100-399, title IV, §401(w), Aug. 17, 1988, 102 Stat. 999.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2097, Pub. L. 92-181, title II, §2.16, Dec. 10, 1971, 85 Stat. 602; Pub. L. 96-592, title II, §211, Dec. 24, 1980, 94 Stat. 3443, related to other services, prior to the general amendment of this subchapter by Pub. L. 100-233, §401.

A prior section 2.15 of Pub. L. 92-181 was renumbered section 2.14 and is classified to section 2096 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100-233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

§2098. Taxation

Each Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held by a Federal land bank association to the same extent, according to its value, as other similar property held by other persons is taxed. The mortgages held by the Federal land bank associations and the notes, bonds, debentures, and other obligations issued by the associations shall be considered and held to be instrumentalities of the United States and, as such, they and the income therefrom shall be exempt from all Federal, State, municipal, and local taxation, other than Federal income tax liability of the holder thereof under the Public Debt Act of 1941 (31 U.S.C. 3124).

(Pub. L. 92–181, title II, §2.16, formerly §2.17, as added Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1637; renumbered §2.16 and amended Pub. L. 100–399, title IV, §401(w), (x), Aug. 17, 1988, 102 Stat. 999.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2098, Pub. L. 92–181, title II, §2.17, Dec. 10, 1971, 85 Stat. 602; Pub. L. 99–205, title II, §205(e)(16), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §805(j), Jan. 6, 1988, 101 Stat. 1715, related to taxation, prior to the general amendment of this subchapter by Pub. L. 100–233, §401.

A prior section 2.16 of Pub. L. 92–181 was renumbered section 2.15 and is classified to section 2097 of this title.

AMENDMENTS

1988—Pub. L. 100–399, §401(x), substituted "derived therefrom, shall" for "derived therefrom shall", "by the associations" for "by the banks", and "3124" for "742(a)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE

Pub. L. 100–233, title IV, §401, Jan. 6, 1988, 101 Stat. 1622, provided that this section is effective 6 months after Jan. 6, 1988.

SUBCHAPTER III—BANKS FOR COOPERATIVES

PART A—BANKS FOR COOPERATIVES

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–233, title IV, §415(1), Jan. 6, 1988, 101 Stat. 1642, inserted part A heading.

§2121. Establishment; titles; branches

The banks for cooperatives established pursuant to sections 2 and 30 of the Farm Credit Act of 1933, as amended, shall continue as federally chartered instrumentalities of the United States. The Farm Credit Administration shall approve amendments consistent with this chapter to charters and organizational certificates of banks for cooperatives. Unless an existing bank for cooperatives is merged with another bank, there shall be a bank for cooperatives in each farm credit district. A bank for cooperatives may include in its title the name of the city in which it is located or other geographical designation. When authorized by the Farm Credit Administration each bank for cooperatives may establish such branches or other offices as may be appropriate for the effective operation of its business.

(Pub. L. 92–181, title III, §3.0, Dec. 10, 1971, 85 Stat. 602; Pub. L. 100–233, title IV, §414(b), title

VIII, §802(m), Jan. 6, 1988, 101 Stat. 1641, 1711; Pub. L. 100–399, title IV, §406(b), title IX, §901(c), Aug. 17, 1988, 102 Stat. 1000, 1007; Pub. L. 115–334, title V, §5411(4), Dec. 20, 2018, 132 Stat. 4679.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 2 and 30 of the Farm Credit Act of 1933, as amended, referred to in text, were classified to sections 1134 and 1134f, respectively, of this title prior to their repeal by section 5.26 of Pub. L. 92–181, which enacted this chapter.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–334 struck out "and a Central Bank for Cooperatives" after "each farm credit district" and "The Central Bank for Cooperatives may be located in such place as its board of directors may determine with the approval of the Farm Credit Administration." after "other geographical designation."

1988—Pub. L. 100–399, §901(c), substituted "merged with another bank" for "merged with one or more other such banks under section 2181 of this title".

Pub. L. 100–233, §802(m), substituted "The Farm Credit Administration shall approve amendments consistent with this chapter to charters and organizational certificates of banks for cooperatives" for "Their charters or organization certificates may be modified from time to time by the Farm Credit Administration, not inconsistent with the provisions of this subchapter, as may be necessary or expedient to implement this chapter".

Pub. L. 100–233, §414(b), which designated existing provisions as subsec. (a), and added subsec. (b) reading "Each bank for cooperatives shall elect from its voting stockholders a board of directors of such number, for such term, in such manner, and with such qualifications as may be required in its bylaws, except that, at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.", was repealed by section 406(b) of Pub. L. 100–399. See Construction of 1988 Amendment note below.

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.

CONSTRUCTION OF 1988 AMENDMENT

Pub. L. 100–399, title IV, §406(b), Aug. 17, 1988, 102 Stat. 1000, provided that section 414(b) of Pub. L. 100–233, cited as a credit to this section, is repealed and that the Agricultural Credit Act of 1987 (Pub. L. 100–233) and this chapter shall be applied and administered as if such section had not been enacted.

VOLUNTARY MERGER OF BANKS FOR COOPERATIVES

Pub. L. 100–233, title IV, §413, Jan. 6, 1988, 101 Stat. 1639, as amended by Pub. L. 100–399, title IV, §405, Aug. 17, 1988, 102 Stat. 1000, provided that:

"(a) SUBMISSION OF PROPOSAL.—

"(1) SPECIAL COMMITTEE.—

"(A) IN GENERAL.—Not later than 15 days after the date of the enactment of this section [Jan. 6, 1988], a special committee shall be selected pursuant to subparagraph (B), for the purpose of developing a proposal for the voluntary merger of the banks for cooperatives.

"(B) COMPOSITION.—The special committee selected under subparagraph (A) shall be composed of—

"(i) one member of each district board elected by the voting stockholders of the bank for cooperatives in the district; and

"(ii) one member chosen from the board of directors of the Central Bank for Cooperatives by the board of such Bank.

"(C) DEVELOPMENT OF PLAN.—Not later than 75 days after the date of the enactment of this section [Jan. 6, 1988], the special committee shall develop a plan of merger for all such banks and the

Central Bank for Cooperatives into a National Bank for Cooperatives.

"(2) PREREQUISITES TO MERGER.—

"(A) SUBMISSION TO FCA.—On completion of the plan of merger pursuant to paragraph (1)(C), the special committee shall submit the proposed plan, together with all information that is to be distributed to the stockholders concerning such plan, to the Farm Credit Administration for approval.

"(B) EXPEDITED REVIEW.—Not later than 30 days after the Farm Credit Administration receives the plan of merger, the Administration shall promptly review such plan and advise the special committee concerning any required changes that are necessary to the plan.

"(3) SUBMISSION TO STOCKHOLDERS.—On approval of the plan by the Farm Credit Administration, the special committee shall, under such procedures as may be established by the committee, submit the plan and recommendations to all voting stockholders of the district banks for cooperatives and the Central Bank for Cooperatives.

"(b) VOTING REQUIREMENTS.—

"(1) MAJORITY VOTE REQUIRED.—An approval of the plan of merger developed and submitted under subsection (a) shall—

"(A) require a majority vote of the stockholders of each district bank for cooperatives voting, in person or by proxy, at a duly authorized stockholders' meeting, computed both—

"(i) in accordance with the requirement that, except as provided in section 3.3(d) [12 U.S.C. 2124(d)], each cooperative that is the holder of voting stock in the bank for cooperatives shall be entitled to cast one vote; and

"(ii) on the basis of the total equity interests in the bank (including allocated, but not unallocated, surplus and reserves) held by such stockholders;

"(B) require a majority vote of the voting stockholders of the Central Bank for Cooperatives voting on a one-bank-one-vote basis;

"(C) take place not later than 180 days after the date of the enactment of this section [Jan. 6, 1988]; and

"(D) take place prior to any other merger vote involving a bank for cooperatives.

"(2) APPROVAL BY ALL BANKS FOR COOPERATIVES.—If the stockholders of all of the banks for cooperatives approve the merger, the merger shall take place.

"(3) EFFECT OF LESSER VOTE.—If the stockholders of more than one but fewer than all of the banks approve the plan, each such bank whose stockholders voted to approve the merger shall be merged into a single bank for cooperatives, as provided in paragraphs (4) or (5).

"(4) NATIONAL BANK FOR COOPERATIVES.—

"(A) CREATION.—If the stockholders of eight or more of the district banks for cooperatives approve the merger, such banks, and the Central Bank for Cooperatives, shall be merged into a single bank, which shall be referred to as the 'National Bank for Cooperatives'.

"(B) SERVICES PROVIDED.—The National Bank for Cooperatives may offer credit and related services to eligible borrowers located within any territory that may be served by Farm Credit System institutions under section 5.0 [12 U.S.C. 2221], or to any borrower otherwise eligible under section 3.7(b) [12 U.S.C. 2128(b)].

"(5) UNITED BANK FOR COOPERATIVES.—

"(A) CREATION.—If the stockholders of more than one but fewer than eight of the district banks approve the plan, each such bank, and the Central Bank for Cooperatives (if approved by a numerical majority of its stockholders), shall be merged into a single bank, which shall be referred to as the 'United Bank for Cooperatives'.

"(B) SERVICES PROVIDED.—The United Bank for Cooperatives shall offer credit and related services only in the territory included, as of the date of the enactment of this section [Jan. 6, 1988], within the boundaries of the districts that had been served by the constituent banks of the United Bank for Cooperatives, and to any borrower otherwise eligible under section 3.7(b) [12 U.S.C. 2128(b)].

"(6) NONCONSENTING BANKS.—

"(A) IN GENERAL.—

"(i) NATIONAL BANK FOR COOPERATIVES.—Any of the district banks whose stockholders did not approve the plan of merger may offer credit and related services to any eligible borrowers within any territory or area that may be served by the National Bank.

"(ii) UNITED BANK FOR COOPERATIVES.—Any of the district banks whose stockholders did not approve the plan of merger shall continue as district banks for cooperatives and shall continue to serve only the territory within the boundaries of the district that such banks served as of the date of the enactment of this section [Jan. 6, 1988].

"(B) NONDISCRIMINATION.—Any district bank whose stockholders did not approve the plan of merger shall be entitled to the availability, from the National Bank for Cooperatives or the United Bank for Cooperatives, as the case may be, of the same credit and related services now provided by the Central Bank for Cooperatives as of the date of the enactment of this section [Jan. 6, 1988], regardless of the decision not to merge.

"(C) SUBSEQUENT MERGERS.—Any district bank referred to in subparagraph (A) may subsequently merge with the National Bank for Cooperatives or the United Bank for Cooperatives, as the case may be, on the approval of the voting stockholders of both banks proposing to merge based on the voting requirement of subsection (b)(1).

"(c) REFERENCES.—References in this section to voting stockholders shall include subscribers to the guaranty fund."

BANK FOR COOPERATIVES INITIAL BOARD OF DIRECTORS

Pub. L. 100–233, title IV, §414(a), Jan. 6, 1988, 101 Stat. 1641, as amended by Pub. L. 100–399, title IV, §406(a), Aug. 17, 1988, 102 Stat. 1000, provided that: "Notwithstanding section 3.2 [probably means section 3.2 of Pub. L. 92–181, 12 U.S.C. 2123], the initial board of each district bank for cooperatives shall be composed of the members of the district board (which is dissolved upon the creation of the district Farm Credit Bank) elected by the stockholders of the bank for cooperatives and one member elected by the other two members, which member shall not be a director, officer, employee, or stockholder of a System institution. The initial board shall operate for such term as is agreed to by the members of the board, except that such period shall not exceed two years. Thereafter, the board shall be elected and serve in accordance with section 3.0 of the Farm Credit Act of 1971 [12 U.S.C. 2121]."

§2122. Corporate existence; general corporate powers

Each bank for cooperatives shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

- (1) Adopt and use a corporate seal.
- (2) Have succession until dissolved under the provisions of this chapter or other Act of Congress.
- (3) Make contracts.
- (4) Sue and be sued.
- (5) Acquire, hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.
- (6) Make loans and commitments for credit, provide services and other assistance as authorized in this chapter, and charge fees therefor.
- (7) Operate under the direction of its board of directors.
- (8) Elect by its board of directors a president, any vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this chapter, define their duties and require surety bonds or make other provisions against losses occasioned by employees.
- (9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, or agents elected or provided for; its property acquired, held, and transferred; its loans made; its general business conducted; and the privileges granted it by law exercised and enjoyed.
- (10) Borrow money and issue notes, bonds, debentures, or other obligations individually or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11)(A) Participate in loans under this subchapter with one or more other banks for cooperatives and with commercial banks and other financial institutions upon such terms as may be agreed among them, and participate with one or more other Farm Credit System institutions in loans made under this subchapter or other subchapters of this chapter on the basis prescribed in section 2206 of this title.

(B)(i) Participate in any loan of a type otherwise authorized under this subchapter that is made to a similar entity by any institution in the business of extending credit, including purchases of participations in loans to finance international trade transactions involving the sale of agricultural

commodities or the products thereof, except that—

(I) a bank for cooperatives may not participate in a loan—

(aa) if the participation would cause the total amount of all loan participations by the bank under this subparagraph involving a single credit risk to exceed 10 percent of the bank's total capital; or

(bb) if the participation by the bank will itself equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by other Farm Credit System institutions, will cause the cumulative amount of the participations by all Farm Credit System institutions in the loan to equal or exceed 50 percent of the principal of the loan;

(II) a bank for cooperatives may not participate in a loan to a similar entity under this subparagraph if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under this chapter, unless agreed to by the Bank or association; and

(III) the cumulative amount of participations that a bank for cooperatives may have outstanding under this subparagraph at any time may not exceed 15 percent of the bank's total assets.

(ii) As used in this subparagraph, the term "similar entity" means an entity that, while not eligible for a loan under section 2129 of this title, is functionally similar to an entity eligible for a loan under section 2129 of this title in that it derives a majority of its income from, or has a majority of its assets invested in, the conduct of activities functionally similar to those conducted by the entity.

(iii) As used in this subparagraph, the term "participate" or "participation" refers to multilender transactions, including syndications, assignments, loan participations, subparticipations, or other forms of the purchase, sale, or transfer of interests in loans, other extensions of credit, or other technical and financial assistance.

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 1813 of this title) or, to the extent necessary to facilitate transactions which may be financed under section 2128(b) of this title, any other financial organization, domestic or foreign, as may be authorized by its board of directors, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13)(A) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized under regulations issued by the Farm Credit Administration.

(B) As may be authorized by its board of directors, buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock.

(C) As may be authorized by its board of directors, and solely for the purposes of obtaining credit information and other services needed to facilitate transactions which may be financed under section 2128(b) of this title, invest in ownership interests in foreign business entities that are principally engaged in providing credit information to and performing such servicing functions for their members in connection with the members' international activities.

(14) Conduct studies and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(17) As may be authorized by the board of directors, maintain credit balances and pay or receive fees or interest thereon, for the purpose of assisting in the transfer of funds to or from parties to

transactions that may be financed under section 2128(b) of this title: *Provided, however*, That nothing herein shall authorize the banks for cooperatives to engage in the business of accepting domestic deposits.

(18) As may be authorized by its board of directors, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose.

(Pub. L. 92–181, title III, §3.1, Dec. 10, 1971, 85 Stat. 602; Pub. L. 96–592, title III, §301, Dec. 24, 1980, 94 Stat. 3443; Pub. L. 99–205, title II, §205(e)(1), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §802(n), Jan. 6, 1988, 101 Stat. 1712; Pub. L. 100–399, title IX, §901(b), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 102–552, title V, §502, Oct. 28, 1992, 106 Stat. 4130; Pub. L. 103–376, §§2, 6, Oct. 19, 1994, 108 Stat. 3497, 3500; Pub. L. 107–171, title V, §5401(a), May 13, 2002, 116 Stat. 349.)

EDITORIAL NOTES

AMENDMENTS

2002—Par. (11)(B)(iii), (iv). Pub. L. 107–171 redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: "With respect to similar entities that are eligible to borrow from a Farm Credit Bank or association under subchapter I or II of this chapter, the authority of a bank for cooperatives to participate in loans to the entities under this subparagraph shall be subject to the prior approval of the Farm Credit Bank or Banks in whose chartered territory the entity is eligible to borrow. The approval may be granted on an annual basis and under such terms and conditions as may be agreed on between the bank for cooperatives and the Farm Credit Bank or Banks that serve the territory."

1994—Par. (11)(B)(i)(I)(bb). Pub. L. 103–376, §6, substituted "other Farm Credit System institutions" for "the other banks for cooperatives under this subparagraph" and "all Farm Credit System institutions" for "all banks for cooperatives".

Par. (11)(B)(iv). Pub. L. 103–376, §2, added cl. (iv).

1992—Par. (11). Pub. L. 102–552 designated existing provisions as subpar. (A) and added subpar. (B).

1988—Par. (12). Pub. L. 100–399 substituted "(within the meaning of section 1813 of this title)" for "as defined in section 1812 of this title."

Pars. (12), (13)(B), (C), (17), (18). Pub. L. 100–233 struck out "and approved by the Farm Credit Administration" after "board of directors".

1985—Pub. L. 99–205 substituted "regulation" for "supervision" in provision preceding par. (1).

Par. (13)(A). Pub. L. 99–205 inserted "under regulations issued" after "authorized".

Pars. (16) to (19). Pub. L. 99–205 struck out par. (16) respecting power of bank for cooperatives to perform any function delegated to it by the Farm Credit Administration, and redesignated pars. (17) to (19) as (16) to (18), respectively.

1980—Par. (11). Pub. L. 96–592, §301(1), inserted provisions respecting participation with one or more other Farm Credit System institutions in loans.

Par. (12). Pub. L. 96–592, §301(2), inserted applicability to any insured State nonmember bank and to other domestic or foreign financial organizations.

Par. (13). Pub. L. 96–592, §301(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Pars. (18), (19). Pub. L. 96–592, §301(4), added pars. (18) and (19).

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2123. Board of directors

(a) In general

Each bank for cooperatives shall elect a board of directors of such number, for such term, in such manner, and with such qualifications as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.

(b) Nomination and election

(1) In general

If approved by the stockholders through a bylaw amendment, the nomination and election of one member from a bank for cooperatives shall be carried out with each voting stockholder of a bank for cooperatives having one vote, plus a number of votes (or fractional part thereof) equal to—

(A) the number of stockholders eligible to vote; multiplied by

(B) the percentage (or fractional part thereof) of the total equity interest (including allocated, but not unallocated, surplus and reserves) in the bank of all stockholders held by the individual voting stockholder at the close of the immediately preceding fiscal year of the bank.

(2) Number of votes

The total number of votes under this subsection shall be the number of voting stockholders of a bank for cooperatives multiplied by two.

(Pub. L. 92–181, title III, §3.2, Dec. 10, 1971, 85 Stat. 603; Pub. L. 99–205, title II, §205(e)(2), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–399, title IX, §901(d), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 102–552, title V, §503, Oct. 28, 1992, 106 Stat. 4130; Pub. L. 115–334, title V, §5411(5), Dec. 20, 2018, 132 Stat. 4679.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334, §5411(5)(B), (C), redesignated subsec. (a)(1) as (a) and subsec. (a)(2) as (b), inserted headings, and struck out former subsec. (b) which read as follows: "The board of directors of the Central Bank for Cooperatives shall consist of one member elected by the board of each bank for cooperatives, including the United Bank for Cooperatives if the Central Bank for Cooperatives is not merged into such bank, and one member appointed by the Farm Credit Administration."

Subsec. (a)(1). Pub. L. 115–334, §5411(5)(A)(i), struck out "not merged into the United Bank for Cooperatives or the National Bank for Cooperatives" after "Each bank for cooperatives".

Subsec. (a)(2)(A). Pub. L. 115–334, §5411(5)(A)(ii), struck out "(other than the National Bank for Cooperatives)" after "a bank for cooperatives" in introductory provisions.

Subsec. (b)(1). Pub. L. 115–334, §5411(5)(C)(ii), (D)(ii), redesignated subsec. (a)(2)(A) and cls. (i) and (ii) thereof as subsec. (b)(1) and subpars. (A) and (B) thereof, respectively, inserted par. heading, and realigned margins.

Subsec. (b)(2). Pub. L. 115–334, §5411(5)(D)(i), (E), redesignated subsec. (a)(2)(B) as subsec. (b)(2), inserted heading, and substituted "this subsection" for "this paragraph".

1992—Subsec. (a). Pub. L. 102–552 designated existing provisions as par. (1) and added par. (2).

1988—Subsec. (a). Pub. L. 100–399 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In the case of a district bank for cooperatives, the board of directors shall be the farm credit district board and in the case of the Central Bank for Cooperatives shall be a separate board of not more than thirteen members, one from each farm credit district and one at large. One district director of the Central Bank Board shall be elected by each district farm credit board and the member at large shall be appointed by the Farm Credit Administration."

Subsec. (b). Pub. L. 100–399 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For the purposes of this section the provisions of sections 2222(b) and (c), 2225, 2226, and 2227 of this title shall apply to and shall be the authority of the Central Bank for Cooperatives the same as though it

were a district bank."

1985—Subsec. (a). Pub. L. 99–205 substituted "Farm Credit Administration" for "Governor with the advice and consent of the Federal Farm Credit Board".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2124. Stock of banks for cooperatives

(a) Amount

The Capital stock of each bank for cooperatives shall be in such amount as its board determines is required for the purpose of providing adequate capital to permit the bank to meet the credit needs of borrowers from the bank and such amounts may be increased or decreased from time to time in accordance with such needs.

(b) Value

The capital stock of each bank shall be divided into shares of par value of \$100 each and may be of such classes as the board may determine. Such stock may be issued in fractional shares.

(c) Eligible holders of voting stock

Voting stock may be issued or transferred to and held only by (i) cooperative associations eligible to borrow from the banks ¹ (ii) other categories of persons and entities described in sections 2128 and 2129 of this title eligible to borrow from the bank, as determined by the bank's board of directors; and (iii) other banks for cooperatives, and shall not be otherwise transferred, pledged, or hypothecated except as consented to by the issuing bank under regulations of the Farm Credit Administration.

(d) Entitlement to vote

Each holder of one or more shares of voting stock which is eligible to borrow from a bank for cooperatives shall be entitled only to one vote and only in the affairs of the bank in the district in which its principal office is located unless otherwise authorized under regulations issued by the Farm Credit Administration, except that if such holder has not been a borrower from the bank in which it holds such stock within a period of two years next preceding the date fixed by the Farm Credit Administration prior to the commencement of voting, it shall not be entitled to vote.

(e) Nonvoting investment stock

Nonvoting investment stock may be issued in such series and in such amounts as may be determined by the board and may be exchanged for voting stock or sold or transferred to any person subject to the approval of the issuing bank.

(f) Participation certificates

Participation certificates may be issued to parties to whom voting stock may not be issued.

(Pub. L. 92–181, title III, §3.3, Dec. 10, 1971, 85 Stat. 603; Pub. L. 96–592, title III, §302, Dec. 24, 1980, 94 Stat. 3443; Pub. L. 99–205, title II, §205(e)(3), (4), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §§802(o), 805(k), Jan. 6, 1988, 101 Stat. 1712, 1715; Pub. L. 110–234, title V, §§5402, 5403(a), May 22, 2008, 122 Stat. 1154; Pub. L. 110–246, §4(a), title V, §§5402, 5403(a), June 18, 2008, 122 Stat. 1664, 1915.)

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. (b). Pub. L. 110–246, §5402, which directed substitution of "par" for "per", could not be executed because "per" did not appear.

Subsec. (c)(ii), (iii). Pub. L. 110–246, §5403(a), added cl. (ii) and redesignated former cl. (ii) as (iii).

1988—Subsec. (a). Pub. L. 100–233, §802(o)(1), struck out ", with the approval of Farm Credit Administration," after "board determines".

Subsec. (b). Pub. L. 100–233, §802(o)(2), struck out "with the approval of the Farm Credit Administration" after "board may determine".

Subsec. (d). Pub. L. 100–233, §805(k), substituted "by" for "by by" after "regulations issued".

Subsec. (e). Pub. L. 100–233, §802(o)(3), struck out "and approved by the Farm Credit Administration" after "Board".

1985—Subsec. (d). Pub. L. 99–205, §205(e)(3), inserted "under regulations issued by" after "authorized".

Subsec. (e). Pub. L. 99–205, §205(e)(4), struck out ", except for stock held by the Governor," before "may be exchanged".

1980—Subsec. (f). Pub. L. 96–592 added subsec. (f).

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 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

¹ So in original. There probably should be a semicolon after "banks".

§2125. Dividends

Dividends may be payable only on nonvoting investment stock, if declared by the board of directors of the bank, subject to the general direction of the Farm Credit Administration.

(Pub. L. 92–181, title III, §3.4, Dec. 10, 1971, 85 Stat. 604; Pub. L. 99–205, title II, §205(e)(5), title VI, §606, Dec. 23, 1985, 99 Stat. 1705, 1711; Pub. L. 100–233, title VIII, §805(l), Jan. 6, 1988, 101 Stat. 1715.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–233 struck out "other than stock held by the Farm Credit Administration," after "investment stock",

1985—Pub. L. 99–205 struck out "the Governor of" before "the Farm Credit Administration" and inserted ", subject to the general direction of the Farm Credit Administration".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2126. Retirement of stock

Nonvoting investment stock and participation certificates may be called for retirement at par. With the approval of the issuing bank, the holder may elect not to have the called stock or participation certificates retired in response to a call, reserving the right to have such stock or participation certificates included in the next call for retirement. Voting stock may also be retired at par, on call or on such revolving basis as the board may determine with due regard for its total capital needs:

Provided, however, That all equities in the banks issued or allocated with respect to 1971 and prior years shall be retired on a revolving basis according to the year of issue with the oldest outstanding equities being first retired. Equities issued for subsequent years shall not be called or retired until equities described in the preceding sentence of this proviso have been retired.

(Pub. L. 92–181, title III, §3.5, Dec. 10, 1971, 85 Stat. 604; Pub. L. 96–592, title III, §303, Dec. 24, 1980, 94 Stat. 3444; Pub. L. 99–205, title II, §205(e)(6), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §802(p), Jan. 6, 1988, 101 Stat. 1712; Pub. L. 115–334, title V, §5411(6), Dec. 20, 2018, 132 Stat. 4679.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 struck out "district" before "banks issued or allocated".

1988—Pub. L. 100–233 struck out "with approval of the Farm Credit Administration" after "board may determine".

1985—Pub. L. 99–205 substituted "Nonvoting investment stock" for "Any nonvoting stock held by the Governor of the Farm Credit Administration shall be retired to the extent required by section 2151(b) of this title before any other outstanding voting or nonvoting stock or participation certificates shall be retired except as may be otherwise authorized by the Farm Credit Administration. When those requirements have been satisfied, nonvoting investment stock", and substituted "Voting" for "When the requirements of section 2151(b) of this title have been met, voting".

1980—Pub. L. 96–592 inserted provisions respecting applicability to participation certificates and struck out provisions relating to maximum amount of fair book value at retirement.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2127. Guaranty fund subscriptions in lieu of stock

If any cooperative association is not authorized under the laws of the State in which it is organized to take and hold stock in a bank for cooperatives, the bank shall, in lieu of any requirement for stock purchase, require the association to pay into or have on deposit in a guaranty fund, or the bank may retain out of the amount of the loan and credit to the guaranty fund account of the borrower, a sum equal to the amount of stock which the association would otherwise be required to own. Each reference to stock of the banks for cooperatives in this chapter shall include such guaranty fund equivalents. The holder of the guaranty fund equivalent and the bank shall each be entitled to the same rights and obligations with respect thereto as the rights and obligations associated with the class or classes of stock involved.

(Pub. L. 92-181, title III, §3.6, Dec. 10, 1971, 85 Stat. 604.)

§2128. Loans, commitments, and technical and financial assistance

(a) Authorities

The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance at any time (whether or not they have a loan from the bank outstanding), including but not limited to discounting notes and other obligations, guarantees, currency exchange necessary to service individual transactions that may be financed under subsection (b) of this section, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder and may make or participate in loans or commitments and extend other technical and financial assistance to other domestic parties for the acquisition of equipment and facilities to be leased to such stockholders for use in their operations in the United States.

(b) Additional authorities

(1) A bank for cooperatives is authorized to make or participate in loans and commitments to, and to extend other technical and financial assistance to a domestic or foreign party with respect to its transactions with an association that is a voting stockholder of the bank for the import of agricultural commodities or products thereof, agricultural supplies, or aquatic products through purchases, sales or exchanges, if the bank for cooperatives determines, under regulations of the Farm Credit Administration, that the voting stockholder will benefit substantially as a result of such loan, commitment, or assistance.

(2)(A) A bank for cooperatives may make or participate in loans and commitments to, and extend other technical and financial assistance to—

(i) any domestic or foreign party for the export, including (where applicable) the cost of freight, of agricultural commodities or products thereof, agricultural supplies, or aquatic products from the United States under policies and procedures established by the bank to ensure that the commodities, products, or supplies are originally sourced, where reasonably available, from one or more eligible cooperative associations described in section 2129(a) of this title on a priority basis, except that if the total amount of the balances outstanding on loans made by a bank under this clause that—

(I) are made to finance the export of commodities, products, or supplies that are not originally sourced from a cooperative, and

(II) are not guaranteed or insured, in an amount equal to at least 95 percent of the amount loaned, by a department, agency, bureau, board, commission, or establishment of the United States or a corporation wholly-owned directly or indirectly by the United States,

exceeds an amount that is equal to 50 percent of the bank's capital, then a sufficient interest in the loans shall be sold by the bank for cooperatives to commercial banks and other non-System lenders to reduce the total amount of such outstanding balances to an amount not greater than an amount equal to 50 percent of the bank's capital; and

(ii) except as provided in subparagraph (B), any domestic or foreign party in which an eligible cooperative association described in section 2129(a) of this title (including, for the purpose of facilitating its domestic business operations only, a cooperative or other entity described in section 2129(b)(1)(A) of this title) has an ownership interest, for the purpose of facilitating the domestic or foreign business operations of the association, except that if the ownership interest by an eligible cooperative association, or associations, is less than 50 percent, the financing shall be limited to the percentage held in the party by the association or associations.

(B) A bank for cooperatives shall not use the authority provided in subparagraph (A)(ii) to provide financial assistance to a party for the purpose of financing the relocation of a plant or facility from the United States to another country.

(3) A bank for cooperatives is authorized to provide such services as may be customary and normal in maintaining relationships with domestic or foreign entities to facilitate the activities specified in paragraphs (1) and (2), consistent with this chapter.

(4) DEFINITION OF AGRICULTURAL SUPPLY.—In this subsection, the term "agricultural supply" includes—

- (A) a farm supply; and
- (B)(i) agriculture-related processing equipment;
- (ii) agriculture-related machinery; and
- (iii) other capital goods related to the storage or handling of agricultural commodities or products.

(c) Applicable policies

Loans, commitments, and assistance authorized by subsection (b) of this section shall be extended in accordance with policies adopted by the board of directors of the bank under regulations of the Farm Credit Administration.

(d) Regulatory limitations

The regulations of the Farm Credit Administration implementing subsection (b) of this section and other provisions of this subchapter relating to the authority under subsection (b) of this section may not confer upon the banks for cooperatives powers and authorities greater than those specified in this subchapter. The Farm Credit Administration shall, during the formulation of such regulations, closely consult on a continuing basis with the Board of Governors of the Federal Reserve System to insure that such regulations conform to national banking policies, objectives, and limitations.

(e) Speculative futures transactions

Notwithstanding any other provision of this subchapter, the banks for cooperatives shall not make or participate in loans or commitments for the purpose of financing speculative futures transactions by eligible borrowers in foreign currencies.

(f) Installation, expansion, or improvement of water and waste disposal facilities

The banks for cooperatives may, for the purpose of installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas, make and participate in loans and commitments and extending other technical and financial assistance to—

- (1) cooperatives formed specifically for the purpose of establishing or operating such facilities; and
- (2) public and quasi-public agencies and bodies, and other public and private entities that, under authority of State or local law, establish or operate such facilities.

For purposes of this subsection, the term "rural area" means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 based on the latest decennial census of the United States.

(Pub. L. 92–181, title III, §3.7, Dec. 10, 1971, 85 Stat. 605; Pub. L. 96–592, title III, §304, Dec. 24, 1980, 94 Stat. 3444; Pub. L. 101–624, title XXIII, §2323(a), Nov. 28, 1990, 104 Stat. 4013; Pub. L. 102–237, title V, §502(e)(1), Dec. 13, 1991, 105 Stat. 1868; Pub. L. 102–552, title V, §§504, 505, Oct. 28, 1992, 106 Stat. 4131; Pub. L. 103–376, §3, Oct. 19, 1994, 108 Stat. 3497; Pub. L. 107–171, title V, §5402, May 13, 2002, 116 Stat. 350; Pub. L. 115–334, title V, §5411(7), Dec. 20, 2018, 132 Stat. 4679.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–334 struck out "Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives." before "Each bank may own".

2002—Subsec. (b)(1), (2)(A)(i). Pub. L. 107–171, §5402(1), substituted "agricultural supplies" for "farm supplies".

Subsec. (b)(4). Pub. L. 107–171, §5402(2), added par. (4).

1994—Subsec. (b)(1). Pub. L. 103–376, §3(A), substituted "assistance to" for "assistance to (A)", "bank for the import" for "bank for the export or import", and "if the bank for cooperatives" for "and (B) a domestic or foreign party in which such an association has at least the minimum ownership interest approved under regulations of the Farm Credit Administration for the purpose of facilitating the association's export or import operations of the type described in subparagraph (A): *Provided*, That a".

Subsec. (b)(2). Pub. L. 103–376, §3(B), added par. (2) and struck out former par. (2) which read as follows: "A bank for cooperatives is authorized to make or participate in loans and commitments, and to extend other technical and financial assistance, to any domestic or foreign entity that is eligible for a guarantee or insurance as described in subparagraphs (A) and (B) with respect to transactions involving the Soviet Union (its successor entities or any of the individual republics of the Soviet Union) or an emerging democracy (as defined in section 1542(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5622 note)) for the export of agricultural commodities and products thereof from the United States, including (where applicable) the cost of freight, if in each case—

"(A) the loan involved is unconditionally guaranteed or insured by a department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; and

"(B) the guarantee or insurance—

"(i) covers at least 95 percent of the amount loaned for the purchase of the commodities or products; and

"(ii) is issued on or before September 30, 1995."

1992—Subsec. (a). Pub. L. 102–552, §504, inserted "at any time (whether or not they have a loan from the bank outstanding)" after "assistance" in first sentence.

Subsec. (f). Pub. L. 102–552, §505, in introductory provisions, substituted "installing, maintaining, expanding, improving, or operating" for "the installation, expansion, or improvement of" and "extending" for "to extend".

1991—Subsec. (b). Pub. L. 102–237 designated existing provisions as par. (1), redesignated cl. (1) as (A) and inserted "or products thereof" after "commodities", redesignated cl. (2) as (B) and substituted "subparagraph (A)" for "clause (1) of this subsection", and added pars. (2) and (3).

1990—Subsec. (f). Pub. L. 101–624 added subsec. (f).

1980—Pub. L. 96–592 designated existing provisions as subsec. (a), inserted provisions relating to currency exchanges and provisions relating to loans, etc., to domestic parties, and added subsecs. (b) to (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

FUNDING TO BE CONSISTENT WITH OTHER LAWS

Pub. L. 118–42, div. B, title VII, §757, Mar. 9, 2024, 138 Stat. 114, provided that: "In this fiscal year and each fiscal year thereafter, and notwithstanding any other provision of law, none of the funds made available by this or any other Act may be used to implement section 3.7(f) of the Farm Credit Act of 1971 [12 U.S.C. 2128(f)] in a manner inconsistent with section 343(a)(13) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1991(a)(13)]."

§2129. Eligibility

(a) Any association of farmers, producers or harvesters of aquatic products, or any federation of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products; or for purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies or furnishing farm or aquatic business services or services to eligible cooperatives and conforms to either of the two following requirements:

(1) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

(2) does not pay dividends on stock or membership capital in excess of such per centum per annum as may be approved under regulations of the Farm Credit Administration; and in any case

(3) does not deal in farm products or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or services to eligible cooperatives with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members, excluding from the total of member and nonmember business transactions with the United States or any agency or instrumentality thereof or services or supplies furnished as a public utility; and

(4) a percentage of the voting control of the association not less than 80 per centum (60 per centum (A) in the case of rural electric, telephone, public utility, and service cooperatives; (B) in the case of local farm supply cooperatives that have historically served needs of the community that would not adequately be served by other suppliers and have experienced a reduction in the percentage of farmer membership due to changed circumstances beyond their control such as, but not limited to, urbanization of the community; and (C) in the case of local farm supply cooperatives that provide or will provide needed services to a community and that are or will be in competition with a cooperative specified in paragraph (B)) or, with respect to any type of association or cooperative, such higher percentage as established by the bank board, is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations as defined herein;

shall be eligible to borrow from a bank for cooperatives. Any such association that has received a loan from a bank for cooperatives shall, without regard to the requirements of paragraphs (1) through (4), continue to be eligible for so long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the association is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations.

(b) Notwithstanding any other provision of this section:

(1) The following entities shall also be eligible to borrow from a bank for cooperatives:

(A) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration (or any successor agency), or that are eligible under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) for a loan, loan commitment, or loan guarantee from the Administration or the Bank (or a successor of the Administration or the Bank), and subsidiaries of such cooperatives or other entities.

(B) Any legal entity that (i) holds more than 50 percent of the voting control of an association or other entity that is eligible to borrow from a bank for cooperatives under subsection (a) or subparagraph (A) of this paragraph, and (ii) borrows for the purpose of making funds available to that association or entity, and makes funds available to that association or entity under the same terms and conditions that the funds are borrowed from a bank for cooperatives.

(C) Any cooperative or other entity described in subsection (b) or (f) of section 2128 of this title.

(D) Any creditworthy private entity that satisfies the requirements for a service cooperative under paragraphs (1), (2), and (4), or under the last sentence, of subsection (a) and subsidiaries of the entity, if the entity is organized to benefit agriculture in furtherance of the welfare of its farmer-members and is operated on a not-for-profit basis.

(2) Notwithstanding the provisions of section 2130 of this title, the board of directors of a bank for cooperatives may determine that, with respect to a loan to any borrower eligible to borrow from a bank under paragraph (1)(A) that is fully guaranteed by the United States, no stock purchase requirement shall apply, other than the requirement that a borrower eligible to own voting stock shall purchase one share of such stock.

(3) Each association and other entity eligible to borrow from a bank for cooperatives under this subsection, for purposes of section 2128(a) of this title, shall be treated as an eligible cooperative association and a stockholder eligible to borrow from the bank.

(4) Nothing in this subsection shall be construed to adversely affect the eligibility, as it existed

on January 6, 1988, of cooperatives and other entities for any other credit assistance under Federal law.

(Pub. L. 92–181, title III, §3.8, Dec. 10, 1971, 85 Stat. 605; Pub. L. 94–184, §1(a), Dec. 31, 1975, 89 Stat. 1060; Pub. L. 96–592, title III, §305, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 99–198, title XIII, §1322, Dec. 23, 1985, 99 Stat. 1534; Pub. L. 100–233, title IV, §421, title VIII, §805(m), Jan. 6, 1988, 101 Stat. 1654, 1715; Pub. L. 100–399, title IV, §410, title IX, §901(e), Aug. 17, 1988, 102 Stat. 1003, 1007; Pub. L. 101–624, title XXIII, §2323(b), Nov. 28, 1990, 104 Stat. 4013; Pub. L. 102–237, title V, §502(e)(2), (f), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102–552, title V, §506, Oct. 28, 1992, 106 Stat. 4131; Pub. L. 103–376, §4, Oct. 19, 1994, 108 Stat. 3498; Pub. L. 104–105, title II, §§204, 205, Feb. 10, 1996, 110 Stat. 172; Pub. L. 115–334, title V, §5411(8), title VI, §6602(b)(17), Dec. 20, 2018, 132 Stat. 4680, 4777.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (b)(1)(A), is act May 20, 1936, ch. 432, 49 Stat. 1363, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

AMENDMENTS

2018—Subsec. (b)(1)(A). Pub. L. 115–334, §6602(b)(17), struck out "or a loan or loan commitment from the Rural Telephone Bank," before "or that are eligible".

Pub. L. 115–334, §5411(8), inserted "(or any successor agency)" after "Rural Electrification Administration".

1996—Subsec. (a). Pub. L. 104–105, §204(a), inserted at end "Any such association that has received a loan from a bank for cooperatives shall, without regard to the requirements of paragraphs (1) through (4), continue to be eligible for so long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the association is held by farmers, producers or harvesters of aquatic products, or eligible cooperative associations."

Subsec. (b)(1)(A). Pub. L. 104–105, §205, substituted "are eligible under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) for" for "have been certified by the Administrator of the Rural Electrification Administration to be eligible for such" and "loan guarantee from the Administration or the Bank (or a successor of the Administration or the Bank), and" for "loan guarantee, and".

Subsec. (b)(1)(D). Pub. L. 104–105, §204(b), substituted "and (4), or under the last sentence, of subsection (a)" for "and (4) of subsection (a)".

1994—Subsec. (b)(1)(B) to (E). Pub. L. 103–376 redesignated subpars. (C) to (E) as (B) to (D), respectively, realigned margin of subpar. (D), and struck out former subpar. (B) which read as follows: "Any legal entity more than 50 percent of the voting control of which is held by one or more associations or other entities that are eligible to borrow from a bank for cooperatives under subsection (a) of this section or subparagraph (A) of this paragraph, except that any such legal entity, when considered together with one or more such associations or other entities that hold such control, meet the requirement of subsection (a)(3) of this section."

1992—Subsec. (b)(1)(E). Pub. L. 102–552 added subpar. (E).

1991—Subsec. (a)(4). Pub. L. 102–237, §502(f)(1), substituted "a percentage" for "A percentage".

Subsec. (b)(1)(D). Pub. L. 102–237, §502(e)(2), (f)(2), substituted "subsection (b) or (f) of section 2128 of this title" for "section 2128(f) of this title" and realigned margin of subpar. (D).

1990—Subsec. (b)(1)(D). Pub. L. 101–624 added subpar. (D).

1988—Pub. L. 100–399, §901(e), substituted "bank board" for "district board" in subsec. (a)(4).

Pub. L. 100–399, §410, substituted "makes" for "make" in subsec. (b)(1)(C).

Pub. L. 100–233, §805(m), redesignated subsec. (1) as subsec. (a) and pars. (a) to (d) as pars. (1) to (4), respectively, in par. (4) redesignated cls. (1) to (3) as (A) to (C), respectively, and in cl. (C) substituted "paragraph (B)" for "paragraph (2)".

Pub. L. 100–233, §421, added subsec. (b) and struck out former subsec. (2) which read as follows: "Notwithstanding any other provision of this subchapter, cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural

Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities, shall also be eligible to borrow from a bank for cooperatives."

1985—Pub. L. 99-198, §1322(1), designated existing provisions as subsec. (1) and added subsec. (2).

1980—Pub. L. 96-592, §305(1), inserted reference to aquatic business in introductory text.

Subsec. (c). Pub. L. 96-592, §305(2), inserted reference to aquatic business services or services to eligible cooperatives.

Subsec. (d). Pub. L. 96-592, §305(3), substituted "60" for "70", and designated former parenthetical material as item (1), and added items (2) and (3) and limitation with respect to any type of association or cooperative.

1975—Subsec. (d). Pub. L. 94-184 inserted provision relating to 70 per centum of voting control in the case of rural electric, telephone, and public utility cooperatives.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 502(f) of Pub. L. 102-237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101-624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102-237, set out as a note under section 1421 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.

§2130. Ownership of stock by borrowers

(a) Each borrower entitled to hold voting stock shall, at the time a loan is made by a bank for cooperatives, own at least one share of voting stock and shall be required by the bank to invest in additional voting stock or nonvoting investment stock at that time, or from time to time, as the lending bank may determine, but the requirement for investment in stock at the time the loan is closed shall not exceed an amount equal to 10 per centum of the face amount of the loan. Such additional ownership requirements may be based on the face amount of the loan, the outstanding loan balance or on a percentage of the interest payable by the borrower during any year or during any quarter thereof, or upon such other basis as the bank determines will provide adequate capital for the operation of the bank and equitable ownership thereof among borrowers.

(b) Notwithstanding the provisions of subsection (a) of this section, the purchase of stock need not be required with respect to that part of any loan made by a bank for cooperatives which it sells to or makes in participation with financial institutions other than any of the banks for cooperatives. In such cases the distribution of earnings of the bank for cooperatives shall be on the basis of the interest in the loan retained by such bank.

(Pub. L. 92-181 title III, §3.9, Dec. 10, 1971, 85 Stat. 605; Pub. L. 96-592, title III, §306, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 100-233, title VIII, §802(q), Jan. 6, 1988, 101 Stat. 1712; Pub. L. 115-334, title V, §5411(9), Dec. 20, 2018, 132 Stat. 4680.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-334 struck out at end "In the case of a direct loan by the Central Bank, the borrower shall be required to own or invest in the necessary stock in a district bank or banks and such district bank shall be required to own a corresponding amount of stock in the Central Bank, but voting stock shall be in the one district bank, designated by the Farm Credit Administration."

1988—Subsec. (a). Pub. L. 100-233 substituted "by the bank to invest" for "by the bank with the approval of the Farm Credit Administration to invest", "or upon such other basis as the bank determines" for "or upon

such other basis as the bank, with the approval of the Farm Credit Administration, determines", and "in a district bank or banks and such district bank shall be required" for "in a district bank or banks as may be approved by the Farm Credit Administration and such district bank shall be required".

1980—Subsec. (a). Pub. L. 96–592 inserted provisions respecting entitlement to hold voting stock.

§2131. Loans

(a) Interest rates and charges

Loans made by a bank for cooperatives shall bear interest at a rate or rates determined by the board of directors of the bank from time to time. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the net cost of money to the bank, necessary reserves and expenses of the bank, and services provided. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

(b) Security

Loans shall be made upon such terms, conditions, and security, if any, as may be determined by the bank in accordance with regulations of the Farm Credit Administration.

(c) Lien

Each bank for cooperatives shall have a first lien on all stock or other equities in the bank as collateral for the payment of any indebtedness of the owner thereof to the bank.

(d) Cancellation; application on indebtedness

In any case where the debt of a borrower is in default, or in any case of liquidation or dissolution of a present or former borrower from a bank for cooperatives, the bank may, but shall not be required to, retire and cancel all or a part of the stock, allocated surplus or contingency reserves, or any other equity in the bank owned by or allocated to such borrower, at the fair market value thereof not exceeding par, and, to the extent required in such cases, corresponding shares and allocations and other equity interests held by a bank in another bank for cooperatives (or any successor bank) on account of such indebtedness, shall be retired or equitably adjusted. In no event shall the bank's equities be retired or canceled if the retirement or cancellation would adversely affect the bank's capital structure, as determined by the Farm Credit Administration.

(Pub. L. 92–181, title III, §3.10, Dec. 10, 1971, 85 Stat. 606; Pub. L. 96–592, title III, §307, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 99–509, title I, §1033(c), Oct. 21, 1986, 100 Stat. 1877; Pub. L. 115–334, title V, §5411(10), Dec. 20, 2018, 132 Stat. 4680.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (c). Pub. L. 115–334, §5411(10)(A), struck out at end "In the case of a direct loan to an eligible cooperative by the Central Bank, the Central Bank shall have a first lien on the stock and equities of the borrower in the district bank and the district bank shall have a lien thereon junior only to the lien of the Central Bank."

Subsec. (d). Pub. L. 115–334, §5411(10)(B), substituted "held by a bank in another bank for cooperatives (or any successor bank) on account of such indebtedness" for "held by a district bank in another district bank on account of such indebtedness".

1986—Subsec. (a). Pub. L. 99–509 struck out ", with the approval of the Farm Credit Administration as provided in section 2205 of this title" after "from time to time".

1980—Subsec. (a). Pub. L. 96–592, §307(1), inserted reference to section 2205 of this title.

Subsec. (d). Pub. L. 96–592, §307(2), substituted "market" for "book" and inserted provisions respecting retirement or cancellation of equities as affected by the capital structure.

§2132. Earnings and reserves; application of savings

(a) Application of savings

At the end of each fiscal year, the net savings shall, under regulations prescribed by the Farm Credit Administration, continue to be applied on a cooperative basis with provision for sound, adequate capitalization to meet the changing financing needs of eligible cooperative borrowers and prudent corporate fiscal management, to the end that current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves related to the year's operations and the remaining net savings shall be distributed as patronage refunds as provided in subsection (b). Such regulations may provide for application of net savings to the restoration or maintenance of an allocated surplus account, reasonable additions to unallocated surplus, or to unallocated reserves after payment of operating expenses, and provide for allocations to patrons not qualified under title 26, or payment of such per centum of patronage refunds in cash, as the board may determine.

(b) Patronage refunds

The net savings of each bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsection (a) of this section shall be paid in stock, participation certificates, or cash, or in any of them, as determined by its board, as patronage refunds to borrowers to whom such refunds are payable who are borrowers of the fiscal year for which such patronage refunds are distributed. All patronage refunds shall be paid in proportion that the amount of interest and service fees on the loans to each borrower during the year bears to the interest and service fees on the loans of all borrowers during the year or on such other proportionate patronage basis as may be approved by the board of directors.

(c) Loss carryover

In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any applicable reserves), such loss may be carried forward or carried back, if appropriate, or otherwise shall be absorbed by charges to unallocated reserve or surplus accounts established after December 10, 1971; charges to allocated contingency reserve account; charges to allocated surplus accounts; charges to other contingency reserve and surplus accounts; the impairment of voting stock; or the impairment of all other stock.

(d) Charge of unrecognized costs or expenses to reserve, surplus, or patronage allocations

Notwithstanding any other provisions of this section any costs or expenses attributable to a prior year or years but not recognized in determining the net savings for such year or years may be charged to reserves or surplus of the bank or to patronage allocations for such years, as may be determined by the board of directors.

(e) Payment of patronage refunds in cash

A bank for cooperatives may pay in cash such portion of its patronage refunds as will permit its taxable income to be determined without taking into account savings applied as allocated surplus, allocated contingency reserves, and patronage refunds under subsection (a) of this section.

(Pub. L. 92-181, title III, §3.11, Dec. 10, 1971, 85 Stat. 606; Pub. L. 96-592, title III, §308, Dec. 24, 1980, 94 Stat. 3445; Pub. L. 99-205, title II, §205(e)(7), (8), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100-233, title VIII, §§802(r), 805(n), Jan. 6, 1988, 101 Stat. 1712, 1716; Pub. L. 115-334, title V, §5411(11), Dec. 20, 2018, 132 Stat. 4680.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-334, §5411(11)(A), substituted "subsection (b)" for "subsections (b) and (c) of this section".

Subsec. (b). Pub. L. 115-334, §5411(11)(B), struck out "district" before "bank for cooperatives" and substituted "All patronage" for "Except as provided in subsection (c) below, all patronage".

Subsecs. (c) to (f). Pub. L. 115-334, §5411(11)(C), (D), redesignated subsecs. (d) to (f) as (c) to (e),

respectively, and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: "The net savings of the Central Bank for Cooperatives after the earnings for the fiscal year have been applied in accordance with subsection (a) of this section shall be paid in stock or cash, or both, as determined by the board, as patronage refunds to the district banks on the basis of interests held by the Central Bank in loans made by the district banks and upon any direct loans made by the Central Bank to cooperative associations, or on such other proportionate patronage basis as may be approved by the board of directors. In cases of direct loans, such refund shall be paid to the district bank or banks which issued their stock to the borrower incident to such loans, and the district bank or banks shall issue a like amount of patronage refunds to the borrower."

1988—Subsec. (a). Pub. L. 100–233, §§802(r)(1), 805(n)(1), (5), redesignated subsec. (b) as (a), substituted "(b) and (c)" for "(c) and (d)", struck out "as may be approved by the Farm Credit Administration" after "payment of operating expenses", and struck out at end "If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the United States, provision will be made for payment of franchise taxes required in section 2151 of this title."

Subsec. (b). Pub. L. 100–233, §§802(r)(2), 805(n)(2), (5), redesignated subsec. (c) as (b) and substituted "(a) of this section" for "(b) of this section, whichever is applicable," "(c) below" for "(d) below", and "may be approved by the board of directors" for "the Farm Credit Administration may approve". Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 100–233, §§802(r)(3), 805(n)(3), (5), redesignated subsec. (d) as (c) and substituted "(a) of this section" for "(b) of this section whichever is applicable," and "may be approved by the board of directors" for "the Farm Credit Administration may approve". Former subsec. (c) redesignated (b).

Subsecs. (d), (e). Pub. L. 100–233, §805(n)(5), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d) redesignated (c).

Subsecs. (f), (g). Pub. L. 100–233, §805(n)(4), (5), redesignated subsec. (g) as (f), substituted "A bank for cooperatives" for "For any year that a bank for cooperatives is subject to Federal income tax, it", and struck out "or (b)" after "subsection (a)". Former subsec. (f) redesignated (e).

1985—Subsec. (a). Pub. L. 99–205, §205(e)(7), struck out subsec. (a) which provided for application of savings when bank for cooperatives has outstanding stock held by the Governor.

Subsec. (b). Pub. L. 99–205, §205(e)(8)(A), substituted "At the end of each fiscal year, the net" for "Whenever at the end of any fiscal year a bank for cooperatives shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net".

Subsecs. (c), (d). Pub. L. 99–205, §205(e)(8)(B), substituted "subsection (b) of this section" for "subsection (a) or (b) of this section".

1980—Subsec. (b). Pub. L. 96–592, §308(1), struck out provisions relating to 25 per centum requirement for net savings.

Subsec. (c). Pub. L. 96–592, §308(2), inserted applicability to participation certificates and to borrowers to whom refunds are payable.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2133. Distribution of assets on liquidation or dissolution

In the case of liquidation or dissolution of any bank for cooperatives, after payment or retirement, first, of all liabilities; second, of all capital stock issued before January 1, 1956, at par, and all nonvoting stock at par; and third, all voting stock at par; any surplus and reserves existing on January 1, 1956, shall be paid to the holders of stock issued before that date, and voting stock pro rata; and any remaining allocated surplus and reserves shall be distributed to those entities to which they are allocated on the books of the bank, and any other remaining surplus shall be paid to the holders of outstanding voting stock. If it should become necessary to use any surplus or reserves to pay any liabilities or to retire any capital stock, unallocated reserves or surplus, allocated reserves and surplus shall be exhausted in accordance with rules prescribed by the Farm Credit Administration.

(Pub. L. 92–181, title III, §3.12, Dec. 10, 1971, 85 Stat. 608; Pub. L. 99–205, title II, §205(e)(9),

Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §805(o), Jan. 6, 1988, 101 Stat. 1716.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–233 inserted "the" before "Farm Credit Administration".

1985—Pub. L. 99–205 struck out ", any stock held by the Governor of the Farm Credit Administration at par" before ", and all nonvoting stock at par", and struck out "stock held by the Governor of the Farm Credit Administration," before "and voting stock pro rata" in first sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2134. Taxation

Each bank for cooperatives and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such bank shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority, except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder.

(Pub. L. 92–181, title III, §3.13, Dec. 10, 1971, 85 Stat. 608; Pub. L. 99–205, title II, §205(e)(10), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title VIII, §805(p), Jan. 6, 1988, 101 Stat. 1716.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–233 inserted before period at end ", except that interest on such obligations shall be subject to Federal income taxation in the hands of the holder".

1985—Pub. L. 99–205 struck out last two sentences relating to exemption of banks for cooperatives and their property, franchises, capital, reserves, surplus, other funds, and income from Federal and non-Federal taxation except for Federal income taxation of interest on obligations of such banks and for Federal and non-Federal taxation of real and tangible personal property of such banks to same extent as similar property is taxed, and making such exemption provisions applicable only for any year or part thereof in which stock in such banks was held by the Governor of the Farm Credit Administration.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

PART B—NATIONAL BANKS FOR COOPERATIVES

EDITORIAL NOTES

CODIFICATION

Pub. L. 115–334, title V, §5411(12), Dec. 20, 2018, 132 Stat. 4680, struck out "United and" before

"National" in part heading.

§2141. Charter, powers, and operation

(a) Charter

The National Bank for Cooperatives (hereinafter in this part referred to as the "consolidated bank"), established under section 413 of the Agricultural Credit Act of 1987, shall be a federally chartered instrumentality of the United States and an institution of the Farm Credit System.

(b) Powers

The consolidated bank and the board of directors of such bank shall have all of the powers, rights, responsibilities, and obligations of the constituent banks described in section 413(b) of the Agricultural Credit Act of 1987 (12 U.S.C. 2121 note; Public Law 100–233) and the boards of directors of such banks, except as otherwise provided for in this chapter.

(c) Operation

The consolidated bank shall be organized and operated on a cooperative basis.

(Pub. L. 92–181, title III, §3.20, as added Pub. L. 100–233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1642; amended Pub. L. 100–399, title IV, §407(a), (b), Aug. 17, 1988, 102 Stat. 1000; Pub. L. 115–334, title V, §5411(13), Dec. 20, 2018, 132 Stat. 4680.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 413 of the Agricultural Credit Act of 1987, referred to in subsecs. (a) and (b), is section 413 of Pub. L. 100–233, which is set out as a note under section 2121 of this title.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–334, §5411(13)(A), struck out "or the United Bank for Cooperatives, as the case may be" after "National Bank for Cooperatives".

Subsec. (b). Pub. L. 115–334, §5411(13)(B), substituted "the constituent banks described in section 413(b) of the Agricultural Credit Act of 1987 (12 U.S.C. 2121 note; Public Law 100–233)" for "the district banks for cooperatives and the Central Bank for Cooperatives".

1988—Subsec. (a). Pub. L. 100–399, §407(a), struck out "in this section" after "referred to" and inserted ", established under section 413 of the Agricultural Credit Act of 1987," before "shall".

Subsec. (b). Pub. L. 100–399, §407(b), inserted "except" before "as otherwise".

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.

§2142. Repealed. Pub. L. 115–334, title V, §5411(14), Dec. 20, 2018, 132 Stat. 4680

Section, Pub. L. 92–181, title III, §3.21, as added Pub. L. 100–233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1642; amended Pub. L. 100–399, title IV, §407(c), (d), Aug. 17, 1988, 102 Stat. 1000, related to provisions for the board of directors of a consolidated bank.

§2143. Credit delivery office

On a determination by the board of directors of the consolidated bank that the bank's loan portfolio

is concentrated in any one district or districts (according to the district boundaries in effect immediately prior to the effective date of the establishment of the bank under section 413 of the Agricultural Credit Act of 1987), the bank may consider the creation of regional service centers to accommodate such loan concentrations.

(Pub. L. 92-181, title III, §3.22, as added Pub. L. 100-233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1643; amended Pub. L. 100-399, title IV, §407(e), Aug. 17, 1988, 102 Stat. 1000.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 413 of the Agricultural Credit Act of 1987, referred to in text, is section 413 of Pub. L. 100-233, which is set out as a note under section 2121 of this title.

AMENDMENTS

1988—Pub. L. 100-399 substituted "consolidated bank" for "United Bank for Cooperatives or the National Bank for Cooperatives" and "establishment of the bank under section 413 of the Agricultural Credit Act of 1987" for "merger".

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.

§2144. Consolidation of functions

Subject to section 2143 of this title, to the greatest extent practicable, the functions of the consolidated bank shall be consolidated in the central office of the bank.

(Pub. L. 92-181, title III, §3.23, as added Pub. L. 100-233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1644.)

§2145. Exchange of ownership interests

On the establishment of the consolidated bank, ownership interests of the stockholders and subscribers to the guaranty funds of the constituent district banks for cooperatives (including stock, participation certificates, and allocated equities) shall be exchanged for like ownership interests in the consolidated bank on a book value basis.

(Pub. L. 92-181, title III, §3.24, as added Pub. L. 100-233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1644.)

§2146. Capitalization

In accordance with section 2154a of this title, each consolidated bank shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the bank and the manner in which bank stock shall be issued, held, transferred, and retired and bank earnings distributed.

(Pub. L. 92-181, title III, §3.25, as added Pub. L. 100-233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1644; amended Pub. L. 100-399, title IV, §407(f), Aug. 17, 1988, 102 Stat. 1000.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–399 amended section generally. Prior to amendment, section read as follows: "The board of directors of the consolidated bank shall provide for the capitalization of such bank in accordance with the provisions of section 2154a 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.

§2147. Patronage pools

Under such terms and conditions as may be determined by its board of directors, the consolidated bank may—

(1) for a period of at least 3 years following January 6, 1988, establish separate patronage pools consisting of loans to eligible borrowers located in each constituent farm credit district (as such district existed on January 6, 1988); and

(2) allocate revenues, expenses, and net savings among such pools on an equitable basis.

(Pub. L. 92–181, title III, §3.26, as added Pub. L. 100–233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1644.)

§2148. Transactions to accomplish merger

The receipt of assets or assumption of liabilities by the consolidated bank, the exchange of stock, equities, or other ownership interests, and any other transaction carried out in accomplishing the merger of the banks for cooperatives shall not be treated as a taxable event under the laws of the United States or of any State or political subdivision thereof. The preceding sentence shall also apply to the receipt of assets and liabilities by a cooperative to the extent that the net amount of the distribution is immediately reinvested in stock of a consolidated bank (and in such case the basis of such stock shall be appropriately reduced by the amount of gain not recognized by reason of this sentence).

(Pub. L. 92–181, title III, §3.27, as added Pub. L. 100–233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1644; amended Pub. L. 100–399, title IV, §407(g), Aug. 17, 1988, 102 Stat. 1001.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–399 substituted "cooperative" for "taxable institution".

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.

§2149. Lending limits

The Farm Credit Administration may not establish lending limits for the consolidated bank with

respect to any loans or borrowers that are more restrictive than the combined lending limits that were previously established by the Farm Credit Administration for the constituent banks described in section 413(b) of the Agricultural Credit Act of 1987 (12 U.S.C. 2121 note; Public Law 100–233) with respect to such loans or borrowers.

(Pub. L. 92–181, title III, §3.28, as added Pub. L. 100–233, title IV, §415(2), Jan. 6, 1988, 101 Stat. 1644; amended Pub. L. 115–334, title V, §5411(15), Dec. 20, 2018, 132 Stat. 4680.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 substituted "the constituent banks described in section 413(b) of the Agricultural Credit Act of 1987 (12 U.S.C. 2121 note; Public Law 100–233)" for "a district bank for cooperatives and the Central Bank for Cooperatives".

§2149a. Repealed. Pub. L. 115–334, title V, §5411(16), Dec. 20, 2018, 132 Stat. 4680

Section, Pub. L. 92–181, title III, §3.29, formerly title VII, §7.5, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1646; renumbered §3.29, Pub. L. 100–399, title IV, §408(e), Aug. 17, 1988, 102 Stat. 1001, related to reports by merged banks for cooperatives.

Section was classified to section 2279a–5 of this title prior to renumbering by Pub. L. 100–399.

SUBCHAPTER IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

§2151. Repealed. Pub. L. 115–334, title V, §5411(17), Dec. 20, 2018, 132 Stat. 4680

Section, Pub. L. 92–181, title IV, §4.0, Dec. 10, 1971, 85 Stat. 609; Pub. L. 99–205, title I, §101(1), Dec. 23, 1985, 99 Stat. 1678; Pub. L. 100–233, title II, §202, Jan. 6, 1988, 101 Stat. 1605; Pub. L. 100–399, title II, §202, Aug. 17, 1988, 102 Stat. 992, related to the revolving fund in effect immediately before Jan. 6, 1988.

§2152. Repealed. Pub. L. 100–233, title II, §207(a)(1), Jan. 6, 1988, 101 Stat. 1607

Section, Pub. L. 92–181, title IV, §4.1, as added Pub. L. 99–205, title I, §104, Dec. 23, 1985, 99 Stat. 1687, contained requirements for purchase of stock and payment of assessments and contribution of capital to Capital Corporation.

A prior section 2152, Pub. L. 92–181, title IV, §4.1, Dec. 10, 1971, 85 Stat. 609, related to revolving funds and government deposits, prior to repeal, effective thirty days after Dec. 23, 1985, by Pub. L. 99–205, title I, §101(2), Dec. 23, 1985, 99 Stat. 1678.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Pub. L. 100–233, title II, §207(b), Jan. 6, 1988, 101 Stat. 1607, provided that: "The repeals made by subsection (a) [repealing this section and sections 2216 to 2216k, and 2252(a)(8) of this title] shall take effect 15 days after the date of the enactment of this Act [Jan. 6, 1988]."

§2153. Power to borrow; issuance of notes, bonds, debentures, and other obligations

Each of the banks of the System, in order to obtain funds for its authorized purposes, shall have power, subject to regulation by the Farm Credit Administration, and subject to the limitations of paragraph (e) of this section, to—

(a) Borrow money from or loan to any other institution of the System, borrow from any commercial bank or other lending institution, issue its notes or other evidence of debt on its own individual responsibility and full faith and credit, and invest its excess funds in such sums, at such times, and on such terms and conditions as it may determine.

(b) Issue its own notes, bonds, debentures, or other similar obligations, fully collateralized as provided in section 2154(c) of this title by the notes, mortgages, and security instruments it holds in the performance of its functions under this chapter in such sums, maturities, rates of interest, and terms and conditions of each issue as it may determine with approval of the Farm Credit Administration.

(c) Join with any or all banks organized and operating under the same subchapter of this chapter in borrowing or in issuance of consolidated notes, bonds, debentures, or other obligations as may be agreed with approval of the Farm Credit Administration.

(d) Join with other banks of the System in issuance of System-wide notes, bonds, debentures, and other obligations in the manner, form, amounts, and on such terms and conditions as may be agreed upon with approval of the Farm Credit Administration. Such System-wide issue by the participating banks and such participations by each bank shall not exceed the limits to which each such bank is subject in the issuance of its individual or consolidated obligations and each such issue shall be subject to approval of the Farm Credit Administration: *Provided, however,* There shall be no issues of System-wide obligations without the concurrence of the boards of directors of each bank and the approval of the Farm Credit Administration for such issues shall be conditioned on and be evidence of the compliance with this provision.

(e) No bank or banks shall issue notes, bonds, debentures, or other obligations individually or in concert with one or more banks of the System other than through the Federal Farm Credit Banks Funding Corporation under any provision of this chapter except under subsection (a) of this section: *Provided,* That any bank or banks may issue investment bonds or like obligations other than through the Federal Farm Credit Banks Funding Corporation if the interest rate is not in excess of the interest allowable on savings deposits of commercial banks of comparable amounts and maturities under Federal Reserve regulation on its member banks.

(Pub. L. 92–181, title IV, §4.2, Dec. 10, 1971, 85 Stat. 610; Pub. L. 99–205, title II, §205(f)(1), Dec. 23, 1985, 99 Stat. 1705; Pub. L. 100–233, title IV, §418(b), formerly §415(b), Jan. 6, 1988, 101 Stat. 1653, renumbered §418(b), Pub. L. 100–399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003; Pub. L. 100–399, title II, §203(e), Aug. 17, 1988, 102 Stat. 993.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–233 substituted "the boards of directors of each bank" for "the boards of directors of each of the 12 districts and the Central Bank for Cooperatives".

Subsec. (e). Pub. L. 100–399, §203(e), substituted "System other than through the" for "System other than through their", and substituted "Federal Farm Credit Banks Funding Corporation" for "fiscal agent" in two places.

1985—Pub. L. 99–205 substituted "regulation by" for "supervision of" in provision preceding subsec. (a).

Subsec. (b). Pub. L. 99–205 substituted references to section "2154(c)" for "2154(b)" and "Farm Credit Administration" for "Governor".

Subsecs. (c), (d). Pub. L. 99–205 substituted "Farm Credit Administration" for "Governor" wherever appearing.

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§2154. Capital adequacy of banks and institutions

(a) Minimum levels of capital

The Farm Credit Administration shall cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the Farm Credit Administration deems appropriate. The Farm Credit Administration may establish such minimum level of capital for a System institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the System institution.

(b) Failure to maintain minimum levels; directives; plans for achieving minimum levels; proposals affecting compliance

(1) Failure of a System institution to maintain capital at or above its minimum level as established under subsection (a) may be deemed by the Farm Credit Administration, in its discretion, to constitute an unsafe and unsound practice within the meaning of this chapter.

(2) In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Farm Credit Administration may issue a directive to a System institution that fails to maintain capital at or above its required level as established under subsection (a). Such directive may require the System institution to submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and timing by which the System institution shall achieve its required capital level, but may not require merger or consolidation without a majority vote of the voting stockholders or the contributors to the guaranty fund of the institution.

(3) The Farm Credit Administration may consider such System institution's progress in adhering to any plan required under paragraph (2) whenever such System institution, or an affiliate thereof, seeks the requisite approval of the Farm Credit Administration for any proposal that would divert earnings, diminish capital, or otherwise impede such System institution's progress in achieving its minimum capital level. The Farm Credit Administration may deny such approval where it determines that such proposal would adversely affect the ability of the System institution to comply with such plan.

(c) Enhancement of capital adequacy of banks

Each bank shall have on hand at the time of issuance of any note, bond, debenture, or other similar obligation and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under this chapter or real or personal property acquired in connection with loans made under this chapter, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(Pub. L. 92-181, title IV, §4.3, Dec. 10, 1971, 85 Stat. 611; Pub. L. 99-205, title I, §101(3), Dec. 23, 1985, 99 Stat. 1678; Pub. L. 100-233, title III, §304, title VIII, §§804(a)(3), 805(q), Jan. 6, 1988, 101 Stat. 1621, 1715, 1716; Pub. L. 100-399, title VII, §702(b), Aug. 17, 1988, 102 Stat. 1006.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–233, §804(a)(3), struck out subpar. (A) designation and struck out subpar. (B) which read as follows: "Any directive issued under this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of section 2267 of this title to the same extent as an effective and outstanding order issued under section 2261 of this title that has become final."

Subsec. (c). Pub. L. 100–233, §805(q), which directed the amendment of subsec. (c) by substituting "direct or fully guaranteed" for "direct of fully guaranteed" was repealed by Pub. L. 100–399, §702(b). See Construction of 1988 Amendment note below.

Pub. L. 100–233, §304, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Each bank shall have on hand at the time of issuance of any long-term notes, bonds, debentures, or other similar obligations and at all times thereafter maintain, free from any lien or other pledge, notes and other obligations representing loans made under the authority of this chapter, obligations of the United States or any agency thereof direct or fully guaranteed, other readily marketable securities approved by the Farm Credit Administration, or cash, in an aggregate value equal to the total amount of long-term notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable."

1985—Pub. L. 99–205 substituted "Capital adequacy of banks and associations" for "Aggregate of obligations; collateral" in section catchline.

Subsec. (a). Pub. L. 99–205 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "No issue of long-term notes, bonds, debentures, or other similar obligations by a bank or banks shall be approved in an amount which, together with the amount of other bonds, debentures, long-term notes, or other similar obligations issued and outstanding, exceeds twenty times the capital and surplus of all the banks which will be primarily liable on the proposed issue, or such lesser amount as the Farm Credit Administration shall establish by regulation."

Subsecs. (b), (c). Pub. L. 99–205 added subsec. (b) and redesignated former subsec. (b) as (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

CONSTRUCTION OF 1988 AMENDMENT

Pub. L. 100–399, title VII, §702(b), Aug. 17, 1988, 102 Stat. 1006, provided that section 805(q) of Pub. L. 100–233, cited as a credit to this section, is repealed and that subsec. (c) of this section shall be applied and administered as if such section had not been enacted.

MINIMUM CAPITAL ADEQUACY STANDARDS

Pub. L. 100–233, title III, §301(a), Jan. 6, 1988, 101 Stat. 1608, as amended by Pub. L. 100–399, title III, §301(a), Aug. 17, 1988, 102 Stat. 993, provided that:

"(1) IN GENERAL.—

"(A) ESTABLISHMENT.—Within 120 days after the date of the enactment of this Act [Jan. 6, 1988], the Farm Credit Administration shall issue regulations under section 4.3(a) of the Farm Credit Act of 1971 (12 U.S.C. 2154(c) [12 U.S.C. 2154(a)]) that establish minimum permanent capital adequacy standards for Farm Credit System institutions.

"(B) BASIS FOR ESTABLISHMENT.—The standards established under subparagraph (A) shall apply to an institution based on the financial statements of the institution prepared in accordance with generally accepted accounting principles.

"(C) RATIO OF CAPITAL TO ASSETS.—The standards established under subparagraph (A) shall specify fixed percentages representing the ratio of permanent capital of the institution to the assets of the institution, taking into consideration relative risk factors as determined by the Farm Credit Administration.

"(D) PHASE-IN PERIOD.—The standards established under subparagraph (A) shall be phased in during the 5-year period beginning on the date of the enactment of this Act [Jan. 6, 1988].

"(2) EMERGENCY POWER NOT AVAILABLE.—The Farm Credit Administration shall not invoke the emergency provisions of section 5.17(c)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2251(c)(2) [12 U.S.C. 2252(c)(2)]) with respect to the issuance of the regulations required under paragraph (1)(A).

"(3) PROHIBITIONS DURING TRANSITION PERIOD.—During the 5-year period specified in paragraph (1)(D), the Farm Credit Administration shall not initiate any receivership, conservatorship, liquidation, or enforcement action against any System institution certified to issue preferred stock under section 6.27 of the

Farm Credit Act of 1971 (as added by section 201 of this Act) [12 U.S.C. 2278b–7], solely because of the failure of such institution to meet minimum permanent capital adequacy standards unless such action is recommended or concurred in by the Farm Credit System Assistance Board established under section 6.0 of such Act (as added by section 201 of this Act) [former 12 U.S.C. 2278a].

"(4) PERMANENT CAPITAL.—For purposes of this subsection, the term 'permanent capital' has the same meaning given that term in section 4.3A(a)(1) of the Farm Credit Act of 1971 [12 U.S.C. 2154a(a)(1)]."

§2154a. Capitalization of System institutions

(a) Definitions

As used in this section:

(1) Permanent capital

The term "permanent capital" means—

(A) current year retained earnings;

(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(C) all surplus (less allowances for losses);

(D) stock issued by a System institution, except—

(i) stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; or

(ii) stock that is protected under section 2162 of this title or is otherwise not at risk; and

(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.

(2) Stock

The term "stock" means voting and nonvoting stock (including preferred stock), equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other forms and types of equities.

(b) Adoption of bylaws

Subject to approval by shareholders under subsection (c)(2), each bank and association shall adopt bylaws, developed by its board of directors, that provide for the capitalization of the institution in accordance with subsection (c)(1).

(c) Requirements of bylaws

(1) In general

Notwithstanding any other provision of this chapter, the bylaws adopted under subsection (b)—

(A) shall provide for such classes, par value, and amounts of the stock of the institution, the manner in which such stock shall be issued, transferred, and retired, and the payment of dividends and patronage refunds, as determined appropriate by the Board of Directors, subject to this section;

(B) may provide for the charging of loan origination fees as determined appropriate by the Board of Directors;

(C) shall enable the institution to meet the capital adequacy standards established under the regulations issued under section 2154(a) of this title;

(D) shall provide for the issuance of voting stock, which may only be held by—

(i) borrowers who are farmers, ranchers, or producers or harvesters of aquatic products, and cooperative associations eligible to borrow from System institutions under this chapter;

(ii) persons and entities eligible to borrow from the banks for cooperatives, as described in

section 2124(c)(ii) of this title;

(iii) in the case of a Central Bank for Cooperatives, other banks for cooperatives; and

(iv) in the case of banks other than banks for cooperatives, System associations;

(E) shall require that—

(i) as a condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount not less than \$1,000 or 2 percent of the amount of the loan, whichever is less; and

(ii) within 2 years after the loan of a borrower is repaid in full, any voting stock held by the borrower be converted to nonvoting stock;

(F) may provide that persons who are not borrowers from the institution may hold nonvoting stock of the institution;

(G) shall require that any holder of voting stock issued before the adoption of bylaws under this section exchange a portion of such stock for new voting stock;

(H) do not need to provide for maximum or minimum standards of borrower stock ownership based on a percentage of the loan of the borrower, except as otherwise provided in this section;

(I) shall permit the retirement of stock at the discretion of the institution if the institution meets the capital adequacy standards established under section 2154(a) of this title; and

(J) shall permit stock to be transferable.

(2) Effective date

The bylaws adopted by the board of directors of a System institution under subsection (b) shall take effect only on approval of a majority of the stockholders of such institution present and voting, or voting by written proxy, at a duly authorized stockholders' meeting.

(d) Reduction of capital

(1) General rule

Except as provided in paragraph (2), the board of directors of a System institution may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock if, after or due to such action, the permanent capital of the institution would thereafter fail to meet the minimum capital adequacy standards established under section 2154(a) of this title.

(2) Exceptions

Paragraph (1) shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital. Notwithstanding paragraph (1), any System institution subject to Federal income tax may pay patronage refunds partially in cash as long as the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

(e) Compliance

The Farm Credit Administration may issue a directive that requires compliance with subsection (d), to the board of directors of any System institution that fails to comply therewith.

(f) Loans designated for sale or sold into secondary market

(1) In general

Subject to paragraph (2) and notwithstanding any other provision of this section, the bylaws adopted by a bank or association under subsection (b) may provide—

(A) in the case of a loan made on or after February 10, 1996, that is designated, at the time the loan is made, for sale into a secondary market, that no voting stock or participation certificate purchase requirement shall apply to the borrower for the loan; and

(B) in the case of a loan made before February 10, 1996, that is sold into a secondary market, that all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.

(2) Applicability

Notwithstanding any other provision of this section, in the case of a loan sold to a secondary market under subchapter VIII, paragraph (1) shall apply regardless of whether the bank or association retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

(3) Exception

(A) In general

Subject to subparagraph (B) and notwithstanding any other provision of this section, if a loan designated for sale under paragraph (1)(A) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the voting stock or participation certificate purchase requirement that would otherwise apply to the loan in the absence of a bylaw provision described in paragraph (1)(A) shall be effective.

(B) Retirement

The bylaws adopted by a bank or association under subsection (b) may provide that if a loan described in subparagraph (A) is sold into a secondary market after the end of the 180-day period described in the subparagraph, all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.

(g) Construction

This section shall not be construed to affect the provisions of this chapter that confer on System institutions a lien on borrower stock or other equities and the privilege to retire or cancel such stock or other equities for application against the indebtedness on a defaulted or restructured loan.

(h) Controlling authority

To the extent that any provision of this section is inconsistent with any other provision of this chapter (other than section 2162 of this title), the provision of this section shall control.

(Pub. L. 92-181, title IV, §4.3A, as added Pub. L. 100-233, title III, §301(b), Jan. 6, 1988, 101 Stat. 1608; amended Pub. L. 100-399, title III, §301(b)-(f), Aug. 17, 1988, 102 Stat. 994; Pub. L. 102-552, title I, §101, Oct. 28, 1992, 106 Stat. 4103; Pub. L. 104-105, title II, §206, Feb. 10, 1996, 110 Stat. 173; Pub. L. 110-234, title V, §5403(b), May 22, 2008, 122 Stat. 1154; Pub. L. 110-246, §4(a), title V, §5403(b), 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. (c)(1)(D)(ii) to (iv). Pub. L. 110-246, §5403(b), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

1996—Subsecs. (f) to (h). Pub. L. 104-105 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1992—Subsec. (a)(1). Pub. L. 102-552 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'permanent capital' means current year retained earnings, allocated and unallocated earnings, all surplus (less allowances for losses), and stock issued by a System institution, except stock that—

"(A) may be retired by the holder thereof on repayment of the holder's loan, or otherwise at the option or request of the holder; or

"(B) is protected under section 2162 of this title or is otherwise not at risk."

1988—Subsec. (a)(1)(B). Pub. L. 100-399, §301(b), substituted "section 2162 of this title" for "section

4.9B".

Subsec. (c)(1)(D)(i). Pub. L. 100-399, §301(c)(1), substituted "producers or" for "producers, or".

Subsec. (c)(1)(G). Pub. L. 100-399, §301(c)(2), substituted "voting stock issued" for "stock issued".

Subsec. (c)(1)(H). Pub. L. 100-399, §301(d), inserted ", except as otherwise provided in this section" after "the borrower".

Subsec. (c)(1)(I). Pub. L. 100-399, §301(e), struck out "standards issued under" after "established under".

Subsec. (d)(1). Pub. L. 100-399, §301(f), struck out "and in section 2162 of this title" after "paragraph (2)" and "or allocated equities" after "retirement of stock".

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.

§2155. Liability of banks; United States not liable

(a) Joint and several liability of banks

(1) Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same subchapter of this chapter.

(2)(A) Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make.

(B) Such calls first shall be made on all nondefaulting banks in proportion to each such bank's proportionate share of the aggregate available collateral held by all such banks.

(C) For purposes of this paragraph, the term "available collateral" means the amount (determined at the close of the last calendar quarter ending before such call) by which a bank's collateral as described in section 2154 of this title exceeds the collateral required to support the bank's outstanding notes, bonds, debentures, and other similar obligations.

(D) If the Farm Credit Administration makes any such call and the available collateral of all such banks does not fully satisfy the liability necessitating such calls, such calls shall be made on all nondefaulting banks in proportion to each such bank's remaining assets.

(E) Any System bank that, pursuant to a call by the Farm Credit Administration, makes a payment of principal or interest to the holder of any consolidated or System-wide obligation issued on behalf of another System bank shall be subrogated to all rights of the holder against such other bank to the extent of such payment.

(F) On making such a call with respect to obligations issued on behalf of a System bank, the Farm Credit Administration shall appoint a receiver for the bank, which shall expeditiously liquidate or otherwise wind up the affairs of the bank.

(b) Resolutions as to liability; execution of obligations

Each bank participating in an issue shall by appropriate resolution undertake such responsibility as provided in subsection (a), and in the case of consolidated or System-wide obligations shall authorize

the execution of such long-term notes, bonds, debentures, or other obligations on its behalf. When a consolidated or System-wide issue is approved, the notes, bonds, debentures, or other obligations shall be executed and the banks shall be liable thereon as provided herein.

(c) United States liability

The United States shall not be liable or assume any liability directly or indirectly thereon.

(d) Insurance Fund called on before invoking joint and several liability

Beginning 5 years after January 6, 1988, the Farm Credit Administration shall not call on any System institution to satisfy the liability of the institution on any joint, consolidated, or System-wide obligation participated in by the institution or with respect to which the institution is primarily, or jointly and severally, liable, before the Farm Credit Insurance Fund is exhausted, even if the Fund is only able to make a partial payment because of insufficient amounts in the Fund.

(Pub. L. 92-181, title IV, §4.4, Dec. 10, 1971, 85 Stat. 611; Pub. L. 99-205, title I, §101(4), title II, §205(f)(2), Dec. 23, 1985, 99 Stat. 1679, 1706; Pub. L. 100-233, title II, §207(c), title III, §303, Jan. 6, 1988, 101 Stat. 1608, 1620; Pub. L. 100-399, title III, §303, Aug. 17, 1988, 102 Stat. 995.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-233, §303(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Each bank of the System shall be fully liable on notes, bonds, debentures, or other obligations issued by it individually, and shall be liable for the interest payments on long-term notes, bonds, debentures, or other obligations issued by other banks operating under the same subchapter of this chapter. Each bank shall also be primarily liable for the portion of any issue of consolidated or System-wide obligations made on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration in order to make payments of interest or principal which any bank primarily liable therefor shall be unable to make. Such calls shall be made first upon the other banks operating under the same subchapter of this chapter as the defaulting bank, and second upon banks operating under other subchapters of this chapter, taking into consideration the capital, surplus, bonds, debentures, or other obligations which each may have outstanding at the time of such assessment."

Subsec. (c). Pub. L. 100-233, §207(c), redesignated subsec. (d) as (c), and struck out former subsec. (c) which provided that for purposes of this part, the term "bank" included the Capital Corporation.

Subsec. (d). Pub. L. 100-399 redesignated subsec. (e) as (d).

Pub. L. 100-233, §207(c), redesignated subsec. (d) as (c).

Subsec. (e). Pub. L. 100-399 redesignated subsec. (e) as (d).

Pub. L. 100-233, §303(b), added subsec. (e).

1985—Subsec. (b). Pub. L. 99-205, §205(f)(2), substituted "execution of" for "Governor to execute" in first sentence and struck out "by the Governor" after "shall be executed" in second sentence.

Subsecs. (c), (d). Pub. L. 99-205, §101(4), added subsec. (c) and redesignated former subsec. (c) as (d).

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§2156. Repealed. Pub. L. 100-233, title II, §204(b), Jan. 6, 1988, 101 Stat. 1607

Section, Pub. L. 92-181, title IV, §4.5, Dec. 10, 1971, 85 Stat. 611; Pub. L. 96-592, title IV, §401, Dec. 24,

1980, 94 Stat. 3446; Pub. L. 99–205, title II, §205(f)(3), Dec. 23, 1985, 99 Stat. 1706, provided for establishment of a finance committee for banks organized and operated under subchapters I, II, and III of this chapter. See section 2160 of this title.

§2157. Bonds as investments

The bonds, debentures, and other similar obligations issued under the authority of this chapter shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits.

(Pub. L. 92–181, title IV, §4.6, Dec. 10, 1971, 85 Stat. 612.)

§2158. Purchase and sale by Federal Reserve System

Any member of the Federal Reserve System may buy and sell bonds, debentures, or other similar obligations issued under the authority of this chapter and any Federal Reserve bank may buy and sell such obligations to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under section 355 of this title.

(Pub. L. 92–181, title IV, §4.7, Dec. 10, 1971, 85 Stat. 612.)

§2159. Purchase and sale of obligations

Each bank of the System may purchase its own obligations and the obligations of other banks of the System and may provide for the sale of obligations issued by it, consolidated obligations, or Systemwide obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

(Pub. L. 92–181, title IV, §4.8, Dec. 10, 1971, 85 Stat. 612; Pub. L. 99–509, title I, §1034, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100–233, title II, §205(a), Jan. 6, 1988, 101 Stat. 1607; Pub. L. 115–334, title V, §5411(18), Dec. 20, 2018, 132 Stat. 4680.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 struck out subsec. (a) designation before "Each bank" and struck out subsec. (b) which described conditions under which each bank of the System could reduce the cost of its borrowings and amortize certain capitalizations through Dec. 31, 1992.

1988—Subsec. (b). Pub. L. 100–233 substituted "December 31, 1992" for "December 31, 1988" in two places.

1986—Pub. L. 99–509 designated existing provisions as subsec. (a) and added subsec. (b).

§2160. Federal Farm Credit Banks Funding Corporation

(a) Establishment

There is hereby established the Federal Farm Credit Banks Funding Corporation (hereinafter in this section referred to as the "Corporation"), which shall be an institution of the Farm Credit System.

(b) Duties

The Corporation—

(1) shall issue, market, and handle the obligations of the banks of the Farm Credit System, and interbank or intersystem flow of funds as may from time to time be required;

(2) acting for the banks of the Farm Credit System, subject to approval of the Farm Credit Administration, shall determine the amount, maturities, rates of interest, terms, and conditions of participation by the several banks in each issue of joint, consolidated, or System-wide obligations; and

(3) shall exercise such other powers as were provided to the predecessor Federal Farm Credit Banks Funding Corporation in accordance with its charter issued under section 2211 of this title, in effect immediately before January 6, 1988.

(c) Officers and committees

(1) Designation

The board of directors may designate such officers and committees for such terms and such purposes as may be agreed on by the board.

(2) Issuance of obligations

When appropriate to the board's functions under this section, a committee of the board of directors of the Corporation, or representatives thereof, may act on behalf of the board in connection with the issuance of joint, consolidated, and System-wide obligations.

(d) Board of directors

(1) Composition

The board of directors shall be composed of nine voting members and one nonvoting member, as follows:

(A) Four voting members shall be current or former directors of the System banks elected by the shareholders of the Corporation.

(B) Three voting members shall be chief executive officers or presidents of System banks elected by the shareholders of the Corporation.

(C) Two voting members shall be appointed by the members elected under subparagraphs (A) and (B) after the elected members have received recommendations for such appointments from, and consulted with, the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System. The appointed members shall be selected from United States citizens—

(i) who are not borrowers from, shareholders in, or employees or agents of any System institution, who are not affiliated with the Farm Credit Administration, and who are not actively engaged with a bank or investment organization that is a member of the Corporation's selling group for System-wide securities; and

(ii) who are experienced or knowledgeable in corporate and public finance, agricultural economics, and financial reporting and disclosure.

(D) The president of the Corporation shall serve as a nonvoting member of the board.

(2) Considerations

In selecting candidates under subparagraphs (A) and (B) of paragraph (1), due consideration shall be given to choosing individuals knowledgeable in agricultural economics, public and corporate finance, and financial reporting and disclosure.

(3) Representation of board

The Farm Credit System Insurance Corporation shall not have representation on the board of directors of the Corporation.

(e) Succession

(1) Assets and liabilities

The Corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor Federal Farm Credit Banks Funding Corporation (hereinafter referred to in this subsection as "the predecessor corporation") chartered under this chapter, or any

court, succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the predecessor corporation, matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the predecessor corporation.

(2) Contracts

The existing contractual obligations, security instruments, and title instruments of the predecessor corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Corporation.

(3) Stock

The stock of the predecessor corporation issued before January 6, 1988, shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into stock of the Corporation established by this section.

(4) Taxation

The succession to assets, assumption of liabilities, conversion of obligations, instruments, and stock, and effectuation of any other transaction by the Corporation to carry out this subsection shall not be treated as a taxable event under the laws of any State or political subdivision thereof.

(Pub. L. 92-181, title IV, §4.9, Dec. 10, 1971, 85 Stat. 612; Pub. L. 100-233, title II, §204(a), Jan. 6, 1988, 101 Stat. 1605; Pub. L. 100-399, title II, §203(a)-(d), Aug. 17, 1988, 102 Stat. 992, 993; Pub. L. 102-552, title V, §507, Oct. 28, 1992, 106 Stat. 4131; Pub. L. 115-334, title V, §5411(19), Dec. 20, 2018, 132 Stat. 4681.)

EDITORIAL NOTES

REFERENCES IN TEXT

January 6, 1988, referred to in subsec. (e)(3), was in the original "the date of the enactment of this section", which was translated as meaning the date of enactment of Pub. L. 100-233, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

Subsec. (d)(2). Pub. L. 115-334, §5411(19)(A), designated concluding provisions of subsec. (d)(1) as par. (2), inserted heading, inserted "of paragraph (1)" after "(A) and (B)", and struck out former par. (2) which related to Assistance Board non-voting representatives and post-termination representation on the board of directors of the Corporation.

Subsec. (d)(3). Pub. L. 115-334, §5411(19)(A)(i), added par. (3).

Subsecs. (e), (f). Pub. L. 115-334, §5411(19)(B), (C), redesignated subsec. (f) as (e) and struck out former subsec. (e) which set out transitional authority until a majority of the voting members of the board of directors of the Corporation was elected.

1992—Subsec. (d)(2). Pub. L. 102-552 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(A) ASSISTANCE BOARD.—During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a nonvoting representative to the board of directors of the Corporation.

"(B) INSURANCE CORPORATION.—After such period, the board of directors of the Farm Credit System Insurance Corporation may designate one of its directors to serve as a nonvoting representative to the board of directors of the Corporation.

"(C) MEETINGS.—The persons so designated by the Assistance Board and by the Farm Credit System Insurance Corporation may attend and participate in all deliberations of the board of directors of the Corporation."

1988—Pub. L. 100-233 amended section generally. Prior to amendment, section read as follows: "A fiscal agency shall be established by the banks for such of their functions relating to the issuance, marketing, and handling of their obligations, and interbank or intersystem flow of funds as may from time to time be

required."

Subsec. (b)(3). Pub. L. 100–399, §203(b), inserted "predecessor Federal Farm Credit Banks" before "Funding Corporation".

Subsec. (d)(2)(B), (C). Pub. L. 100–399, §203(c), substituted "directors of the Corporation" for "directors of the Federal Farm Credit Banks Funding Corporation".

Subsec. (e). Pub. L. 100–399, §203(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Until a quorum of the board of directors of the Corporation is elected or appointed, the finance committee established under section 2156 of this title in effect before January 6, 1988, and the fiscal agency established under section 2160 of this title in effect before January 6, 1988, shall continue to operate as if this section had not been enacted."

Subsec. (f). Pub. L. 100–399, §203(a), added subsec. (f).

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.

§2161. Repealed. Pub. L. 100–399, title I, §101(a), Aug. 17, 1988, 102 Stat. 989

Section, Pub. L. 92–181, title IV, §4.9A, as added Pub. L. 99–205, title I, §105, Dec. 23, 1985, 99 Stat. 1687, authorized a central reserve for Farm Credit System.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective immediately after enactment of Pub. L. 100–233, approved Jan. 6, 1988, see section 1001(a) of Pub. L. 100–399, set out as a note under section 2002 of this title.

§2162. Protection of borrower stock

(a) Retirement of stock

Notwithstanding any other section of this chapter, each institution of the Farm Credit System, when retiring eligible borrower stock in accordance with this chapter, shall retire such stock at par value.

(b) Certain powers not affected

This section does not affect the authority of any institution of the Farm Credit System—

- (1) to retire or cancel borrower stock at par value for application against a loan in default;
- (2) to cancel borrower stock at par value under section 2202b of this title; or
- (3) to apply, against any outstanding indebtedness to a System association arising out of or in connection with a liquidation referred to in subsection (d)(2), the par value of borrower stock frozen in such liquidation.

(c) Inability to retire stock at par value

(1) In general

If an institution is unable to retire eligible borrower stock at par value due to the liquidation of the institution, the Farm Credit System Insurance Corporation, acting as receiver, shall retire such stock at par value as would have been retired in the ordinary course of business of the institution.

(2) Funding

The Farm Credit System Insurance Corporation shall use such funds from the Farm Credit Insurance Fund as are sufficient to carry out this section.

(d) Definitions

For purposes of this section:

(1) Borrower stock

The term "borrower stock" means voting and nonvoting stock, equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other similar equities that are subject to retirement under a revolving cycle issued by any System institution and held by any person other than any System institution.

(2) Eligible borrower stock

The term "eligible borrower stock" means borrower stock that—

(A) is outstanding on January 6, 1988;

(B) is issued or allocated after January 6, 1988, but prior to the earlier of—

(i) in the case of each bank and association, the date of approval, by the stockholders of such bank or association, of the capitalization requirements of the institution in accordance with section 2154a of this title; or

(ii) the date that is 9 months after January 6, 1988;

(C) was, after January 1, 1983, but before January 6, 1988, frozen by an institution that was placed in liquidation; or

(D) was retired at less than par value by an institution that was placed in liquidation after January 1, 1983, but before January 6, 1988.

(3) Institution

The term "institution" means a bank or association chartered under this chapter.

(4) Par value

The term "par value" means—

(A) in the case of stock, par value;

(B) in the case of participation certificates and other equities and interests not described in subparagraph (C), face or equivalent value; or

(C) in the case of participation certificates and allocated equities subject to retirement under a revolving cycle but that a System institution elects to retire out of order for application against a loan in default or otherwise as provided in this chapter, par or face value discounted, at a rate determined by the institution, to reflect the present value of the equity or interest as of the date of such retirement.

(Pub. L. 92–181, title IV, §4.9A, as added Pub. L. 100–233, title I, §101, Jan. 6, 1988, 101 Stat. 1572; amended Pub. L. 100–399, title I, §101(b)–(d), Aug. 17, 1988, 102 Stat. 989; Pub. L. 115–334, title V, §5411(20), Dec. 20, 2018, 132 Stat. 4681.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 4.9A of Pub. L. 92–181, which authorized a central reserve for Farm Credit System, was classified to section 2161 of this title and was repealed by Pub. L. 100–399, §101(a).

AMENDMENTS

2018—Subsec. (c). Pub. L. 115–334 inserted par. (1) designation and heading before "If an institution", substituted "the Farm Credit System Insurance Corporation, acting as receiver," for "the receiver of the institution" and "business of the institution." for "business of the institution, and—", added par. (2), and struck out former pars. (1) and (2) which read as follows:

"(1) during the 5-year period beginning on January 6, 1988, the Assistance Board shall direct the Financial Assistance Corporation to provide the receiver with sufficient funds to enable the receiver to carry out this subsection; and

"(2) after such 5-year period, the Farm Credit System Insurance Corporation shall provide the receiver with

sufficient funds from the Farm Credit Insurance Fund to enable the receiver to carry out this subsection."

1988—Subsec. (a). Pub. L. 100–399, §101(b), struck out provision that an institution whose capital stock is impaired coordinate retirement of stock under this section with the activities of the Assistance Board and the Financial Assistance Corporation.

Subsec. (c). Pub. L. 100–399, §101(c), inserted "stock" in subsec. heading and amended text generally. Prior to amendment, text read as follows: "If an institution is unable to retire eligible borrower stock at par value due to the freezing of such stock during a liquidation of the institution, the receiver of the institution shall retire such stock at par value as would have been retired in the ordinary course of business of the institution and the Financial Assistance Corporation, on request of the Assistance Board, shall provide the receiver with sufficient funds to enable the receiver to carry out this subsection."

Subsec. (d)(2)(B). Pub. L. 100–399, §101(d), in introductory provision substituted "issued or allocated" for "required to be purchased, and is purchased, as a condition of obtaining a loan made" and in cl. (i) substituted "section 2154a of this title" for "section 4.9B".

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.

PART B—DISSOLUTION

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–233, title IV, §418(a)(1), formerly §415(a)(1), Jan. 6, 1988, 101 Stat. 1653, renumbered §418(a)(1), Pub. L. 100–399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003, substituted "Dissolution" for "Dissolution and merger" as part B heading.

§§2181, 2182. Repealed. Pub. L. 100–233, title IV, §418(a)(2), (3), formerly §415(a)(2), (3), Jan. 6, 1988, 101 Stat. 1653; renumbered §418(a)(2), (3), Pub. L. 100–399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003

Section 2181, Pub. L. 92–181, title IV, §4.10, Dec. 10, 1971, 85 Stat. 612; Pub. L. 96–592, title IV, §402, Dec. 24, 1980, 94 Stat. 3446, related to merger of similar banks.

Section 2182, Pub. L. 92–181, title IV, §4.11, Dec. 10, 1971, 85 Stat. 612; Pub. L. 99–205, title II, §205(f)(4), Dec. 23, 1985, 99 Stat. 1706, related to board of directors for merged bank.

§2183. Dissolution; voluntary or involuntary liquidation; mergers; receiverships or conservators

(a) Voluntary liquidation; consent of Farm Credit Administration; rules and regulations; minimization of adverse effect; voluntary merger; mandatory merger on failure to comply or meet obligations

No institution of the System shall go into voluntary liquidation without the consent of the Farm Credit Administration and with such consent may liquidate only in accordance with regulations prescribed by the Farm Credit Administration. In the case of a voluntary liquidation of an association, such regulations, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those

borrowers whose loans are purchased by or otherwise transferred to another System institution. The Farm Credit Administration Board may require an association to merge with another association whenever it determines, with the concurrence of the board of the supervising bank, that an association has failed to meet its outstanding obligations or failed to conduct its operations in accordance with this chapter.

(b) Appointment of conservator or receiver; grounds; action for removal; stay of actions or proceedings

The Farm Credit Administration Board may appoint a conservator or receiver for any System institution on the determination by the Farm Credit Administration Board that one or more of the following exists, or is occurring, with respect to the institution: (1) insolvency, in that the assets of the institution are less than its obligations to its creditors and others, including its members; (2) substantial dissipation of assets or earnings due to any violation of law, rules, or regulations, or to any unsafe or unsound practice; (3) an unsafe or unsound condition to transact business; (4) willful violation of a cease and desist order that has become final; (5) concealment of books, papers, records, or assets of the institution or refusal to submit books, papers, records, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration; (6) the institution is unable to timely pay principal or interest on any insured obligation (as defined in section 2277a(3) of this title) issued by the institution. The Farm Credit Administration Board shall have exclusive power and jurisdiction to appoint a conservator or receiver, and such receiver or conservator, after the 5-year period beginning on January 6, 1988, shall be the Farm Credit System Insurance Corporation. If the Farm Credit Administration Board determines that a ground for the appointment of a conservator or receiver as herein provided exists, the Farm Credit Administration Board may appoint ex parte and without notice a conservator or receiver for the institution. In the event of such appointment, the institution, within thirty days thereafter, may bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver, and the court shall on the merits, dismiss such action or direct the Farm Credit Administration Board to remove such conservator or receiver. On the commencement of such an action, the court having jurisdiction of any other action or enforcement proceeding authorized under this chapter to which the institution is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(c) Involuntary liquidation; rules and regulations; minimization of adverse effect

In the case of an involuntary liquidation of an association, regulations of the Farm Credit Administration, among other things, shall direct the supervising bank to institute such measures as it deems appropriate to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(Pub. L. 92-181, title IV, §4.12, Dec. 10, 1971, 85 Stat. 612; Pub. L. 99-205, title I, §102, title II, §205(f)(5), title III, §305, Dec. 23, 1985, 99 Stat. 1679, 1706, 1708; Pub. L. 100-233, title III, §306, title IV, §418(a)(4), formerly §415(a)(4), §431(g), title VIII, §805(r), Jan. 6, 1988, 101 Stat. 1622, 1653, 1660, 1716, renumbered §418(a)(4), Pub. L. 100-399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003; Pub. L. 100-399, title IX, §901(f), Aug. 17, 1988, 102 Stat. 1007.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-399, §901(f), substituted "board of the supervising bank" for "district board".

Pub. L. 100-233, §415(a)(4), struck out third sentence which provided that Associations may voluntarily merge with other like associations upon the vote of a majority of each of their stockholders present and voting

or voting by written proxy at duly authorized meetings, and with the approval of the supervising bank and the Farm Credit Administration, and substituted "Board may require an association to merge with another association" for "may require such merger" in fourth sentence.

Subsec. (b). Pub. L. 100-233, §431(g), substituted "Farm Credit Administration Board" for "Farm Credit Administration" wherever appearing other than in cl. (5).

Pub. L. 100-233, §306, added cl. (6) and inserted ", and such receiver or conservator, after the 5-year period beginning on January 6, 1988, shall be the Farm Credit System Insurance Corporation" before the period at end of second sentence.

Pub. L. 100-233, §805(r), substituted "court shall" for "court, shall".

1985—Subsec. (a). Pub. L. 99-205, §205(f)(5), substituted "Farm Credit Administration" for "Federal Farm Credit Board" in last sentence.

Pub. L. 99-205, §305(a), inserted after first sentence a sentence requiring the regulations, in the case of a voluntary liquidation of an association, to direct the supervising bank to institute appropriate measures to minimize the adverse effect of the liquidation on borrowers whose loans are purchased by or otherwise transferred to another System institution.

Subsec. (b). Pub. L. 99-205, §102, in revising subsec. (b), substituted expanded provisions respecting appointment of conservator or receiver for former provision, which read as follows: "Upon default of any obligation by any institution of the System, such institution may be declared insolvent and placed in the hands of a conservator or a receiver appointed by the Governor and the proceedings thereon shall be in accordance with regulations of the Farm Credit Administration regarding such insolvencies."

Subsec. (c). Pub. L. 99-205, §305(b), added subsec. (c).

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§2184. Communications with stockholders

(a) Provision of stockholder lists

(1) In general

A Farm Credit System bank or association shall provide to a stockholder of the bank or association a current list of stockholders of the bank or association not later than 7 calendar days after the date on which the bank or association receives a written request for the stockholder list from the stockholder.

(2) Conditions

As a condition of providing a stockholder list under paragraph (1), the bank or association may require that the stockholder agree and certify in writing that the stockholder will—

(A) use the list exclusively for communicating with stockholders for permissible purposes; and

(B) not make the list available to any person, other than the stockholder's attorney or accountant, without first obtaining the written consent of the institution.

(b) Alternative communications

(1) Request to issue

As an alternative to receiving a list of stockholders, a stockholder may request the institution to mail or otherwise furnish to each stockholder a communication for a permissible purpose on behalf of the requesting stockholder.

(2) When permissible

Alternative communications may be used, at the discretion of the requesting stockholder, if the requester agrees to defray the reasonable costs of the communication. If the requester decides to exercise this option, the institution shall provide the requester with a written estimate of the costs of handling and mailing the communication as soon as is practicable after receipt of the stockholder's request to furnish the communication.

(Pub. L. 92–181, title IV, §4.12A, as added Pub. L. 100–233, title IV, §420, Jan. 6, 1988, 101 Stat. 1653; amended Pub. L. 115–334, title V, §5411(21), Dec. 20, 2018, 132 Stat. 4681.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115–334 added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "Within 7 days after receipt of a written request by a stockholder, a bank for cooperatives, Federal land bank association, or production credit association shall provide a current list of its stockholders to such requesting stockholder."

PART C—RIGHTS OF BORROWERS; LOAN RESTRUCTURING

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–233, title VIII, §804(b), Jan. 6, 1988, 101 Stat. 1715, substituted "Rights of Borrowers; Loan Restructuring" for "Rights of Applicants" as part C heading.

§2199. Disclosure

(a) In general

In accordance with regulations of the Farm Credit Administration, qualified lenders shall provide to borrowers, for all loans that are not subject to the Truth in Lending Act (15 U.S.C. 1601 et seq.), meaningful and timely disclosure not later than the time of the loan closing, of—

(1) the current rate of interest on the loan;

(2) in the case of an adjustable or variable rate loan, the amount and frequency by which the interest rate can be increased during the term of the loan or, if there are no such limitations, a statement to that effect, and the factors (including the cost of funds, operating expenses, and provision for loan losses) that will be taken into account by the qualified lender in determining adjustments to the interest rate;

(3) the effect, as shown by a representative example or examples, of any loan origination charges or purchases of stock or participation certificates on the effective rate of interest;

(4) any change in the interest rate applicable to the borrower's loan, and notice to the borrower of a change in the interest rate applicable to the loan of the borrower may be made within a reasonable time after the effective date of an increase or decrease in the interest rate;

(5) except with respect to stock guaranteed under section 2162 of this title, a statement indicating that stock that is purchased is at risk; and

(6) a statement indicating the various types of loan options available to borrowers, with an explanation of the terms and borrowers' rights that apply to each type of loan.

(b) Differential interest rates

A qualified lender offering more than one rate of interest to borrowers shall, at the request of a borrower of a loan—

- (1) provide a review of the loan to determine if the proper interest rate has been established;
- (2) explain to the borrower in writing the basis for the interest rate charged; and
- (3) explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

(Pub. L. 92–181, title IV, §4.13, as added Pub. L. 99–205, title III, §301(b), Dec. 23, 1985, 99 Stat. 1707; amended Pub. L. 100–233, title I, §§103, 109, Jan. 6, 1988, 101 Stat. 1579, 1584; Pub. L. 104–105, title II, §207, Feb. 10, 1996, 110 Stat. 173.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (a), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 4.13 of Pub. L. 92–181, title IV, Dec. 10, 1971, 85 Stat. 613, was renumbered section 4.13B by Pub. L. 99–205, title III, §301(a), Dec. 23, 1985, 99 Stat. 1707, and is classified to section 2201 of this title.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–105 inserted before semicolon at end ", and notice to the borrower of a change in the interest rate applicable to the loan of the borrower may be made within a reasonable time after the effective date of an increase or decrease in the interest rate".

1988—Pub. L. 100–233, §109, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 100–233, §103, amended section generally, substituting introductory provisions and cls. (1) to (6) for former subsecs. (a) and (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2200. Access to documents and information

In accordance with regulations of the Farm Credit Administration, qualified lenders shall provide their borrowers, at the time of execution of loans, copies of all documents signed by the borrower and at any time thereafter, on a borrower's request, copies of all documents signed or delivered by the borrower and at any time, on request, a copy of the institution's articles of incorporation or charter and bylaws and copies of each appraisal of the borrower's assets made or used by the qualified lender.

(Pub. L. 92–181, title IV, §4.13A, as added Pub. L. 99–205, title III, §301(b), Dec. 23, 1985, 99 Stat. 1707; amended Pub. L. 100–233, title I, §104, Jan. 6, 1988, 101 Stat. 1579.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–233 substituted "qualified lenders" for "System institutions" and inserted "and copies of each appraisal of the borrower's assets made or used by the qualified lender" before period at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2201. Notice of action on application

(a) Loan applications

Each qualified lender to which a person has applied for a loan shall provide the person with prompt written notice of—

- (1) the action on the application;
- (2) if the loan applied for is reduced or denied, the reasons for such action; and
- (3) the applicant's right to review under section 2202 of this title.

(b) Distressed loans

Each qualified lender that has a distressed loan outstanding that is subject to restructuring requirements under this chapter shall provide, in accordance with regulations prescribed by the Farm Credit Administration, the borrower with prompt written notice of—

- (1) any action taken with respect to restructuring the loan under section 2202a of this title;
- (2) if restructuring is denied, the reasons for such action; and
- (3) the borrower's right to review under section 2202 of this title.

(Pub. L. 92-181, title IV, §4.13B, formerly §4.13, Dec. 10, 1971, 85 Stat. 613, renumbered §4.13B and amended Pub. L. 99-205, title III, §§301(a), 302, Dec. 23, 1985, 99 Stat. 1707, 1708; Pub. L. 100-233, title I, §105, Jan. 6, 1988, 101 Stat. 1579.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-233 amended section generally. Prior to amendment, section read as follows: "Every applicant for a loan from an institution of the System shall be entitled to prompt written notice of action on his application, and, if the loan applied for is reduced or denied, the reason for such action, and of the applicant's right to review under section 2202 of this title."

1985—Pub. L. 99-205, §302, provided for a "written" notice and for the applicant's right to review under section 2202 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§2202. Reconsideration of actions

(a) Credit review committees

(1) In general

The board of directors of each qualified lender shall establish one or more credit review committees, which shall include farmer board representation.

(2) Membership

In no case shall a loan officer involved in the initial decision on a loan serve on the credit review committee when the committee reviews such loan.

(b) Review of decisions

(1) Denials or reductions

Any applicant for a loan from a qualified lender that has received a written notice issued under section 2201 of this title of a decision to deny or reduce the loan applied for may submit a written request, not later than 30 days after receiving a notice denying or reducing the amount of the loan application, to obtain a review of the decision before the credit review committee.

(2) Denials of restructuring

A borrower of a loan from a qualified lender that has received notice, under section 2201 of this title, of a decision to deny loan restructuring with respect to a loan made to the borrower, if the borrower so requests in writing within 7 days after receiving such notice, may obtain a review of such decision in person before the credit review committee.

(c) Personal appearance

An applicant for a loan or for restructuring, who is entitled to and has requested a review under this section, may appear in person before the credit review committee, and may be accompanied by counsel or by any other representative of such person's choice, to seek a reversal of the decision on the application under review.

(d) Independent appraisal

(1) In general

An appeal filed with a credit review committee under this section may include, as a part of the request for a review of the decision filed under subsection (b)(1) or (2), a request for an independent appraisal, by an accredited appraiser, of any interests in property securing the loan (other than the stock or participation certificates of the qualified lender held by the borrower).

(2) Arrangement and cost

Within 30 days after a request for an appraisal under paragraph (1), the credit review committee shall present the borrower with a list of three appraisers approved by the appropriate qualified lender from which the borrower shall select an appraiser to conduct the appraisal the cost of which shall be borne by the borrower, and shall consider the results of such appraisal in any final determination with respect to the loan.

(3) Copy to borrower

A copy of any appraisal made under this subsection shall be provided to the borrower.

(4) Additional collateral

An independent appraisal shall be permitted if additional collateral for a loan is demanded by the qualified lender when determining whether to restructure the loan.

(e) Notification of applicant

Promptly after a review by the credit review committee, the committee shall notify the applicant or borrower, as the case may be, in writing of the decision of the committee and the reasons for the decision.

(Pub. L. 92-181, title IV, §4.14, Dec. 10, 1971, 85 Stat. 613; Pub. L. 99-205, title III, §303, Dec. 23, 1985, 99 Stat. 1708; Pub. L. 100-233, title I, §106, title VIII, §805(s), Jan. 6, 1988, 101 Stat. 1580, 1716; Pub. L. 100-399, title I, §103, title VII, §702(b), Aug. 17, 1988, 102 Stat. 990, 1006.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-233, §805(s), which directed amendment of this section by substituting "committees" for "committee(s)", "2201" for "2199", and "review" for "reviews", was repealed by Pub. L. 100-399, §702(b). See Construction of 1988 Amendment note below.

Pub. L. 100-233, §106, amended section generally. Prior to amendment, section read as follows: "The

board of directors of each Farm Credit System institution shall establish one or more credit review committee(s), which shall include farmer board representation. [sic] Any loan applicant who has received written notice, under section 2199 of this title, of a decision to deny or reduce the loan applied for, if the applicant so requests in writing within thirty days after receiving such notice, may obtain a review of such decision in person before the credit review committee. When a loan applicant requests review of an adverse credit decision, a majority of persons serving on such reviews committee must be persons who were not involved in making the adverse decision. Promptly after any such review, the applicant shall be notified in writing of the credit review committee's decision and the reasons therefor."

Subsec. (b)(1). Pub. L. 100-399, §103(a), substituted "before the" for "by a".

Subsec. (d)(1). Pub. L. 100-399, §103(b), inserted "or (2)".

1985—Pub. L. 99-205, in amending section generally, substituted provisions respecting reconsideration of action on loan application for prior reconsideration provisions which read as follows: "Any applicant who has reason to believe that the action on his application by an association failed to take into account facts pertinent to his application, or has misinterpreted or failed to properly apply the applicable law or rules and regulations governing his application, may, if he so requests in writing within thirty days of the date of that notice, request an informal hearing on his application and the action of the association in reduction or denial thereof, or the reason for such action, in person before the loan committee or officer or employee thereof authorized to act on applications under section 2033(11) or 2093(18) of this title. Promptly after such a hearing, he shall be notified of the decision upon reconsideration and the reasons therefor."

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

CONSTRUCTION OF 1988 AMENDMENT

Pub. L. 100-399, title VII, §702(b), Aug. 17, 1988, 102 Stat. 1006, provided that section 805(s) of Pub. L. 100-233, cited as a credit to this section, is repealed and that this section shall be applied and administered as if such section had not been enacted.

§2202a. Restructuring distressed loans

(a) Definitions

As used in this part and section 2219a of this title:

(1) Application for restructuring

The term "application for restructuring" means a written request—

- (A) from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;
- (B) submitted on the appropriate forms prescribed by the qualified lender; and
- (C) accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

(2) Cost of foreclosure

The term "cost of foreclosure" includes—

- (A) the difference between the outstanding balance due on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;
- (B) the estimated cost of maintaining a loan as a nonperforming asset;
- (C) the estimated cost of administrative and legal actions necessary to foreclose a loan and

dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(D) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(E) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(3) Distressed loan

The term "distressed loan" means a loan that the borrower does not have the financial capacity to pay according to its terms and that exhibits one or more of the following characteristics:

(A) The borrower is demonstrating adverse financial and repayment trends.

(B) The loan is delinquent or past due under the terms of the loan contract.

(C) One or both of the factors listed in subparagraphs (A) and (B), together with inadequate collateralization, present a high probability of loss to the lender.

(4) Foreclosure proceeding

The term "foreclosure proceeding" means—

(A) a foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a nonaccrual or distressed loan; or

(B) the seizing of and realizing on nonreal property collateral, other than collateral subject to a statutory lien arising under subchapter I or II, to effect collection of a nonaccrual or distressed loan.

(5) Loan

(A) In general

Subject to subparagraph (B), the term "loan" means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(B) Exclusion for loans designated for sale into secondary market

(i) In general

Except as provided in clause (ii), the term "loan" does not include a loan made on or after February 10, 1996, that is designated, at the time the loan is made, for sale into a secondary market.

(ii) Unsold loans

(I) In general

Except as provided in subclause (II), if a loan designated for sale under clause (i) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the provisions of this section and sections 2202, 2202b, 2202d, and 2219a of this title that would otherwise apply to the loan in the absence of the exclusion described in clause (i) shall become effective with respect to the loan.

(II) Later sale

If a loan described in subclause (I) is sold into a secondary market after the end of the 180-day period described in subclause (I), subclause (I) shall not apply with respect to the loan beginning on the date of the sale.

(6) Qualified lender

The term "qualified lender" means—

(A) a System institution that makes loans (as defined in paragraph (5)) except a bank for cooperatives; and

(B) each bank, institution, corporation, company, union, and association described in section

2015(b)(1)(B) of this title but only with respect to loans discounted or pledged under section 2015(b)(1) of this title.

(7) Restructure and restructuring

The terms "restructure" and "restructuring" include rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

(b) Notice

(1) In general

On a determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring, and include with such notice—

(A) a copy of the policy of the lender established under subsection (g) that governs the treatment of distressed loans; and

(B) all materials necessary to enable the borrower to submit an application for restructuring on the loan.

(2) Notice before foreclosure

Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for restructuring, and shall include with such notice a copy of the policy and the materials described in paragraph (1).

(3) Limitation on foreclosure

No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this section.

(c) Meetings

On determination by a qualified lender that a loan made by the lender is or has become a distressed loan, the lender shall provide a reasonable opportunity for the borrower thereof to personally meet with a representative of the lender—

(1) to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring; and

(2) with respect to a loan that is in nonaccrual status, to develop a plan for restructuring the loan if the loan is suitable for restructuring.

(d) Consideration of applications

(1) In general

When a qualified lender receives an application for restructuring from a borrower, the qualified lender shall determine whether or not to restructure the loan, taking into consideration—

(A) whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure;

(B) whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(C) whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(D) whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(E) in the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in nonaccrual status.

(2) Applications not required for restructuring plans

This section shall not prevent a qualified lender from proposing a restructuring plan for an individual borrower in the absence of an application for restructuring from the borrower.

(e) Restructuring

(1) In general

If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan.

(2) Computation of cost of restructuring

In determining whether the potential cost to the qualified lender of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including—

(A) the present value of interest income and principal forgone by the lender in carrying out the restructuring plan;

(B) reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(C) whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(D) whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution.

(f) Least cost alternative

If two or more restructuring alternatives are available to a qualified lender under this section with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(g) Restructuring policy

(1) Establishment

Each bank board of directors shall develop a policy within 60 days after January 6, 1988, that is consistent with this section, to govern the restructuring of distressed loans. Such policy shall constitute the restructuring policy of each qualified lender within the district.

(2) Contents of policy

The policy established under paragraph (1) shall include an explanation of—

(A) the procedure for submitting an application for restructuring; and

(B) the right of borrowers with distressed loans to seek review by a credit review committee in accordance with section 2202 of this title of a denial of an application for restructuring.

(3) Submission of policy to FCA

Each bank board shall submit the policy of the district governing the treatment of distressed loans under this section to the Farm Credit Administration. Notwithstanding the duty imposed by the preceding sentence, the other duties imposed by this section shall take effect on January 6, 1988.

(h) Compliance

The Farm Credit Administration may issue a directive requiring compliance with any provision of this section to any qualified lender that fails to comply with such provision.

(i) Permitted foreclosures

This section shall not be construed to prevent any qualified lender from enforcing any contractual provision that allows the lender to foreclose a loan, or from taking such other lawful action as the

lender deems appropriate, if the lender has reasonable grounds to believe that the loan collateral will be destroyed, dissipated, consumed, concealed, or permanently removed from the State in which the collateral is located.

(j) Application of section

The time limitation prescribed in subsection (b)(2), and the requirements of subsection (c), shall not apply to a loan that became a distressed loan before January 6, 1988, if the borrower and lender of the loan are in the process of negotiating loan restructuring with respect to the loan.

(k) Assistance in restructuring

Each Farm Credit Bank, on request of any association, may assist the association in restructuring loans under this section.

(Pub. L. 92-181, title IV, §4.14A, as added Pub. L. 100-233, title I, §102(a), Jan. 6, 1988, 101 Stat. 1574; amended Pub. L. 100-399, title I, §102(a)-(f), Aug. 17, 1988, 102 Stat. 990; Pub. L. 104-105, title II, §208(a), Feb. 10, 1996, 110 Stat. 173; Pub. L. 115-334, title V, §5411(22), Dec. 20, 2018, 132 Stat. 4681.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-334, §5411(22)(A)(i), inserted "and section 2219a of this title" after "this part" in introductory provisions.

Subsec. (a)(5)(B)(ii)(I). Pub. L. 115-334, §5411(22)(A)(ii), struck out "2202c," after "2202b,".

Subsecs. (h) to (j). Pub. L. 115-334, §5411(22)(B), (C), redesignated subsecs. (i) to (k) as (h) to (j), respectively, and struck out former subsec. (h). Prior to amendment, text of subsec. (h) read as follows: "During the 5-year period beginning on January 6, 1988, each qualified lender shall submit semiannual reports to the Farm Credit Administration containing—

"(1) the results of the review of distressed loans of the lender; and

"(2) the financial effect of loan restructurings and liquidations on the lender."

Subsecs. (k), (l). Pub. L. 115-334, §5411(22)(C), (D), redesignated subsec. (l) as (k) and struck out "production credit" after "request of any". Former subsec. (k) redesignated (j).

1996—Subsec. (a)(5). Pub. L. 104-105 designated existing provisions as subpar. (A), inserted subpar. heading, substituted "Subject to subparagraph (B), the term" for "The term", and added subpar. (B).

1988—Subsec. (a). Pub. L. 100-399, §102(a), struck out "(other than in sections 2205 and 2206 of this title)" after "in this part".

Subsec. (a)(6)(B). Pub. L. 100-399, §102(b), substituted "section 2015(b)(1)(B) of this title" for "section 2074(a)(2) of this title" and "section 2015(b)(1) of this title" for "section 2074(a) of this title".

Subsec. (e)(1). Pub. L. 100-399, §102(c), substituted "cost to such qualified" for "cost to a qualified".

Subsec. (g)(1). Pub. L. 100-399, §102(d), substituted "bank" for "farm credit district".

Subsec. (g)(3). Pub. L. 100-399, §102(e), substituted "bank board" for "district board".

Subsec. (l). Pub. L. 100-399, §102(f), substituted "Farm Credit Bank" for "Federal intermediate credit bank".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 102(b), (f) of 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, and amendment by section 102(a), (c)-(e) of 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 of Pub. L. 100-399, set out as a note under section 2002 of this title.

SENSE OF CONGRESS

Pub. L. 100-233, title I, §102(b), Jan. 6, 1988, 101 Stat. 1579, provided that: "It is the sense of Congress that the banks and associations (except banks for cooperatives) operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) should administer distressed loans to farmers with the objective of using the loan

guarantee programs of the Farmers Home Administration and other loan restructuring measures, including participation in interest rate buy-down programs that are Federally or State funded, and other Federal and State sponsored financial assistance programs that offer relief to financially distressed farmers, as alternatives to foreclosure, considering the availability and appropriateness of such programs on a case-by-case basis."

§2202b. Effect of restructuring on borrower stock

(a) Farm Credit Bank

If a Farm Credit Bank forgives and writes off, under section 2202a of this title, any of the principal outstanding on a loan made to any borrower, the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and, to the extent provided for in the bylaws of the bank relating to its capitalization, the bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) Production credit association

If a production credit association forgives and writes off, under section 2202a of this title, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock.

(c) Retention of stock

Notwithstanding subsections (a) and (b), the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest in the association.

(Pub. L. 92-181, title IV, §4.14B, as added Pub. L. 100-233, title I, §102(a), Jan. 6, 1988, 101 Stat. 1577; amended Pub. L. 100-399, title I, §102(g), Aug. 17, 1988, 102 Stat. 990.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-399 substituted in subsec. heading "Farm Credit Bank" for "Federal land bank" and in text "a Farm Credit Bank" for "a Federal land bank" and ", to the extent provided for in the bylaws of the bank relating to capitalization, the bank shall" for "the Federal land bank shall".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

§2202c. Repealed. Pub. L. 115-334, title V, §5411(23), Dec. 20, 2018, 132 Stat. 4682

Section, Pub. L. 92-181, title IV, §4.14C, as added Pub. L. 100-233, title I, §102(a), Jan. 6, 1988, 101 Stat. 1578; amended Pub. L. 100-399, title I, §102(h), Aug. 17, 1988, 102 Stat. 990, related to review of restructuring denials and establishment of a National Special Asset Council.

§2202d. Protection of borrowers who meet all loan obligations

(a) Foreclosure prohibited

A qualified lender may not foreclose on any loan because of the failure of the borrower thereof to

post additional collateral, if the borrower has made all accrued payments of principal, interest, and penalties with respect to the loan.

(b) Prohibition against required principal reduction

A qualified lender may not require any borrower to reduce the outstanding principal balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principal installment payment (when due and payable), unless—

- (1) the borrower sells or otherwise disposes of part or all of the collateral; or
- (2) the parties agree otherwise in a written agreement entered into by the parties.

(c) Nonenforcement

After a borrower has made all accrued payments of principal, interest, and penalties with respect to a loan made by a qualified lender, the lender shall not enforce acceleration of the borrower's repayment schedule due to the borrower having not timely made one or more principal or interest payments.

(d) Placing loans in nonaccrual status

(1) Notification

If a qualified lender places any loan in nonaccrual status, the lender shall document such change of status and promptly notify the borrower thereof in writing of such action and the reasons therefor.

(2) Review of denial

If the borrower was not delinquent in any principal or interest payment under the loan at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of such denial before the appropriate credit review committee under section 2202 of this title.

(3) Application

This subsection shall only apply if a loan being placed in nonaccrual status results in an adverse action being taken against the borrower.

(Pub. L. 92–181, title IV, §4.14D, as added Pub. L. 100–233, title I, §107, Jan. 6, 1988, 101 Stat. 1581.)

§2202e. Waiver of mediation rights by borrowers

No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the mediation program of any State.

(Pub. L. 92–181, title IV, §4.14E, as added Pub. L. 100–233, title V, §511, Jan. 6, 1988, 101 Stat. 1664; amended Pub. L. 103–354, title II, §282(f)(2), Oct. 13, 1994, 108 Stat. 3235.)

EDITORIAL NOTES

AMENDMENTS

1994—Pub. L. 103–354 struck out "agricultural loan" before "mediation program".

PART D—ACTIVITIES OF INSTITUTIONS OF THE SYSTEM

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–233, title VIII, §805(t)(1), Jan. 6, 1988, 101 Stat. 1716, added part D heading.

§2203. Nomination of association directors; representative selection of nominees

Each production credit association and each Federal land bank association shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year. Each nominating committee shall review lists of farmers from the association territory, determine their willingness to serve, and submit for election a slate of eligible candidates which shall include at least two nominees for each elective office to be filled. In doing so, the committee shall endeavor to assure representation to all sections of the association territory and as nearly as possible to all types of agriculture practiced within the area. Employees of the association shall not be eligible to be nominated, elected, or serve as a member of the board. Nominations shall also be accepted from the floor. Members of the board are not eligible to serve on the nominating committee. Regulations of the Farm Credit Administration governing the election of bank directors shall similarly assure a choice of two nominees for each elective office to be filled and that the bank board represent as nearly as possible all types of agriculture in the district.

(Pub. L. 92–181, title IV, §4.15, Dec. 10, 1971, 85 Stat. 613; Pub. L. 100–399, title IX, §901(g), Aug. 17, 1988, 102 Stat. 1007.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–399 substituted "bank directors" for "district directors" and "bank board" for "district board".

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.

§2204. Repealed. Pub. L. 102–552, title V, §508, Oct. 28, 1992, 106 Stat. 4132

Section, Pub. L. 92–181, title IV, §4.16, Dec. 10, 1971, 85 Stat. 613, prohibited tax-exempt guarantees.

§2205. Interest rates

Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other laws. Such limitation is preempted for purposes of this chapter. Interest rates on loans made by agricultural credit corporations organized in conjunction with cooperative associations for the purpose of financing the ordinary crop operations of the members of such associations or other producers and eligible to discount with the Farm Credit Banks shall be exempt from any interest rate limitation imposed by any State constitution or statute or other laws which are hereby preempted for purposes of this chapter.

(Pub. L. 92–181, title IV, §4.17, as added Pub. L. 96–592, title IV, §403, Dec. 24, 1980, 94 Stat. 3446; amended Pub. L. 99–205, title II, §205(f)(6), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 99–509, title I, §1035, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100–399, title IX, §901(h), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 115–334, title V, §5411(24), Dec. 20, 2018, 132 Stat. 4682.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 struck out "Federal intermediate credit banks and" before "Farm Credit Banks".

1988—Pub. L. 100–399 substituted "and Farm Credit Banks" for "pursuant to section 2074 of this title".

1986—Pub. L. 99–509 substituted first two sentences for former first sentence which read as follows:

"Interest rates on loans from institutions of the Farm Credit System shall be determined with the approval of, as provided in section 2252(a)(5) of this title, the Farm Credit Administration as provided in this chapter, notwithstanding any interest rate limitation imposed by any State constitution or statute or other laws which are hereby preempted for purposes of this chapter."

1985—Pub. L. 99–205 inserted ", as provided in section 2252(a)(5) of this title," after "with the approval of" in first sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2206. Participation loans

Notwithstanding any other provisions of this chapter, the terms of any loan participated in by two or more Farm Credit System institutions operating under different subchapters of this chapter, including provisions for capitalization of the portion of the loan participated in by each institution, shall be as may be agreed upon among such institutions and authorized under regulations issued by the Farm Credit Administration, except that for purposes of determining borrower eligibility, membership, term, amount, loan security, and purchase of stock or participation certificates by the borrower, the provisions of law applicable to the loan shall be the provisions in the subchapter under which the institution that originates the loan operates.

(Pub. L. 92–181, title IV, §4.18, as added Pub. L. 96–592, title IV, §403, Dec. 24, 1980, 94 Stat. 3446; amended Pub. L. 99–205, title II, §205(f)(7), Dec. 23, 1985, 99 Stat. 1706.)

EDITORIAL NOTES

AMENDMENTS

1985—Pub. L. 98–205 inserted "under regulations issued" after "authorized".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2206a. Authority of Farm Credit Banks and direct lender associations to participate in loans to similar entities for risk management purposes

(a) Definitions

As used in this section:

(1) Participate and participation

The terms "participate" and "participation" shall have the meaning provided in section 2122(11)(B)(iii) of this title.

(2) Similar entity

The term "similar entity" means a person that—

(A) is not eligible for a loan from the Farm Credit Bank or association; and

(B) has operations that are functionally similar to a person that is eligible for a loan from the Farm Credit Bank or association in that the person derives a majority of the income of the person from, or has a majority of the assets of the person invested in, the conduct of activities that are functionally similar to the activities that are conducted by an eligible person.

(b) Loan participation authority

Notwithstanding any other provision of this chapter, any Farm Credit Bank or direct lender association chartered under this chapter may participate in any loan of a type otherwise authorized under subchapter I or II made to a similar entity by any person in the business of extending credit, except that a Farm Credit Bank or direct lender association may not participate in a loan under this section if—

(1) the participation would cause the total amount of all participations by the Farm Credit Bank or association under this section involving a single credit risk to exceed 10 percent (or the applicable higher lending limit authorized under regulations issued by the Farm Credit Administration if the stockholders of the respective Farm Credit Bank or association so approve) of the total capital of the Farm Credit Bank or association;

(2) the participation by the Farm Credit Bank or association would equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by other Farm Credit System institutions, would cause the cumulative amount of the participations by all Farm Credit System institutions in the loan to equal or exceed 50 percent of the principal of the loan;

(3) the participation would cause the cumulative amount of participations that the Farm Credit Bank or association has outstanding under this section to exceed 15 percent of the total assets of the Farm Credit Bank or association; or

(4) the loan is of the type authorized under section 2019(b) or 2075(a)(2) of this title.

(Pub. L. 92–181, title IV, §4.18A, as added Pub. L. 103–376, §5, Oct. 19, 1994, 108 Stat. 3498; Pub. L. 107–171, title V, §5401(b), May 13, 2002, 116 Stat. 349.)

EDITORIAL NOTES

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–171, §5401(b)(1), substituted "2122(11)(B)(iii) of this title" for "2122(11)(B)(iv) of this title".

Subsec. (c). Pub. L. 107–171, §5401(b)(2), struck out heading and text of subsec. (c). Text read as follows:

"(1) IN GENERAL.—With respect to a similar entity that is eligible to borrow from a bank for cooperatives under subchapter III of this chapter, the authority of a Farm Credit Bank or association to participate in a loan to the entity under this section shall be subject to the prior approval of the bank for cooperatives having, at the time the loan is made, the greatest loan volume in the State in which the headquarters office of the similar entity is located.

"(2) TERMS AND CONDITIONS.—Approval under paragraph (1) may be granted on an annual basis and under such terms and conditions as may be agreed on between the Farm Credit Bank or association, as the case may be, and the bank for cooperatives granting the approval.

"(3) APPROVAL BY SUPERVISING FARM CREDIT BANK.—An association may not participate in a loan to a similar entity under this section without the approval of the supervising Farm Credit Bank of the association."

§2207. Young, beginning, and small farmers and ranchers

(a) Under policies of the Farm Credit Bank board, each association shall prepare a program for furnishing sound and constructive credit and related services to young, beginning, and small farmers and ranchers. Such programs shall assure that such credit and services are available in coordination with other institutions of the Farm Credit System serving the territory and with other governmental and private sources of credit. Each program shall be subject to review and approval by the supervising bank.

(b) The Farm Credit Bank for each district shall annually obtain from associations under its supervision reports of activities under programs developed pursuant to subsection (a) and progress toward program objectives. On the basis of such reports, the bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in its district under such programs.

(Pub. L. 92-181, title IV, §4.19, as added Pub. L. 96-592, title IV, §403, Dec. 24, 1980, 94 Stat. 3446; amended Pub. L. 100-399, title IX, §901(i), (j), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 115-334, title V, §5411(25), Dec. 20, 2018, 132 Stat. 4682.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-334 struck out "district" before "Farm Credit Bank board" and "Federal land bank association and production credit" before "association shall prepare" and substituted "institutions" for "units".

1988—Subsec. (a). Pub. L. 100-399, §901(i), inserted "Farm Credit Bank" after "district".

Subsec. (b). Pub. L. 100-399, §901(j), substituted "The Farm Credit Bank for each district" for "The Federal land bank and the Federal intermediate credit bank for each district", "under its supervision" for "under their supervision", "subsection (a)" for "subsection (a) of this section", "the bank shall" for "the banks shall", "an annual report" for "a joint annual report", and "achievements in its district" for "achievements in their district".

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

§2208. Prohibition against use of signed ballots

In any election or merger vote, or other proceeding subject to a vote of the stockholders (or subscribers to the guaranty fund of a bank for cooperatives), conducted by a lending institution of the Farm Credit System, the institution—

(1) may not use signed ballots; and

(2) shall implement measures to safeguard the voting process for the protection of the right of stockholders (or subscribers) to a secret ballot.

(Pub. L. 92-181, title IV, §4.20, as added Pub. L. 96-592, title IV, §403, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 100-233, title IV, §425, Jan. 6, 1988, 101 Stat. 1657.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-233 amended section generally. Prior to amendment, section read as follows: "The provisions of (1) section 2074 of this title authorizing the Federal intermediate credit banks to lend to or

discount paper for other financial institutions, and (2) section 2128(b) of this title authorizing the financing of certain domestic or foreign entities in connection with the import or export activities of cooperatives which are borrowers from the banks for cooperatives, shall expire on September 30, 1990, unless extended by Act of Congress prior to that date. Any contract or agreement entered into under the authority of either provision prior to its expiration shall remain in full force and effect notwithstanding such expiration."

§2209. Repealed. Pub. L. 115–334, title V, §5403, Dec. 20, 2018, 132 Stat. 4675

Section, Pub. L. 92–181, title IV, §4.21, as added Pub. L. 100–399, title IV, §414, Aug. 17, 1988, 102 Stat. 1004; amended Pub. L. 102–552, title V, §509, Oct. 28, 1992, 106 Stat. 4132, related to maximum amount of compensation of bank directors.

PART E—SERVICE ORGANIZATIONS

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–233, title VIII, §805(t)(2), Jan. 6, 1988, 101 Stat. 1716, redesignated part D as E.

§2211. Establishment

Any bank of the Farm Credit System, or two or more of such banks acting together, may organize a corporation or corporations for the purpose of performing functions and services for or on behalf of the organizing bank or banks that the bank or banks may perform pursuant to this chapter: *Provided*, That a corporation so organized shall have no authority either to extend credit or provide insurance services for borrowers from Farm Credit System institutions, nor shall it have any greater authority with respect to functions and services than the organizing bank or banks possess under this chapter. The organizing bank or banks shall apply for a Federal charter for the corporation by forwarding to the Farm Credit Administration a statement of the need for the corporation and proposed articles specifying in general terms the objectives for which the corporation is formed, the powers to be exercised by it in carrying out the functions and services, and the territory it is to serve. The Farm Credit Administration for good cause may deny the charter applied for. Upon the approval of articles by the Farm Credit Administration and the issuance of a charter, the corporation shall become as of such date a federally chartered body corporate and an instrumentality of the United States.

(Pub. L. 92–181, title IV, §4.25, as added Pub. L. 96–592, title IV, §404, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 99–205, title II, §205(f)(8), Dec. 23, 1985, 99 Stat. 1706.)

EDITORIAL NOTES

AMENDMENTS

1985—Pub. L. 99–205 struck out "the Governor of" before "the Farm Credit Administration" in second sentence and substituted "Farm Credit Administration" for "Governor" in third and fourth sentences.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2212. Powers of Farm Credit Administration

The Farm Credit Administration shall have power, under rules and regulations prescribed by the Farm Credit Administration, to provide for the organization of any corporation chartered under this part and the territory within which its operations may be carried on, and to approve amendments consistent with this chapter to charters or articles of service corporations.

(Pub. L. 92-181, title IV, §4.26, as added Pub. L. 96-592, title IV, §404, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 99-205, title II, §205(f)(9), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 100-233, title VIII, §802(s), Jan. 6, 1988, 101 Stat. 1712.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-233 struck out "or by prescribing in the terms of the charter or by approval of the bylaws of the corporation" after second reference to Farm Credit Administration, substituted "approve amendments consistent with this chapter to charters or articles of service corporations" for "direct at any time such changes in its charter as the Farm Credit Administration finds necessary for the accomplishment of the purposes of this chapter", and struck out last sentence which read as follows: "The powers of the Farm Credit Administration to provide for the organization of any corporation chartered under this part include, but are not limited to approval of—

"(1) corporate title;

"(2) general corporate powers;

"(3) eligibility for membership on, and the powers, composition, selection, terms, and compensation of the board of directors;

"(4) classes, issuance, value, and retirement of stock;

"(5) sources of operating funds;

"(6) dissolution, liquidation, and distribution of assets on liquidation; and

"(7) application and distribution of earnings."

1985—Pub. L. 99-205 substituted "Farm Credit Administration" for "Governor" in heading and wherever appearing in text, and substituted "the Federal Credit Administration" for "he" before "finds necessary" in first sentence.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§2213. Regulation and examination

The corporations organized under this part shall be institutions of the Farm Credit System and shall be subject to the same regulation and examination by the Farm Credit Administration as are the organizing bank or banks under this chapter.

(Pub. L. 92-181, title IV, §4.27, as added Pub. L. 96-592, title IV, §404, Dec. 24, 1980, 94 Stat. 3447; amended Pub. L. 99-205, title II, §205(f)(10), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 100-233, title VIII, §802(t), Jan. 6, 1988, 101 Stat. 1712.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-233 substituted "Regulation" for "Supervision" in section catchline.

1985—Pub. L. 99-205 substituted "regulation" for "supervision".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2214. State laws

State and other laws shall apply to corporations organized pursuant to this part to the same extent such laws would apply to the organizing banks engaged in the same activity in the same jurisdiction: *Provided, however,* That to the extent that sections 2023, 2098, and 2134 of this title may exempt banks or associations of the Farm Credit System from taxation, such exemptions, other than with respect to franchise taxes, shall not extend to corporations organized pursuant to this part.

(Pub. L. 92–181, title IV, §4.28, as added Pub. L. 96–592, title IV, §404, Dec. 24, 1980, 94 Stat. 3448; amended Pub. L. 100–399, title IX, §901(k), Aug. 17, 1988, 102 Stat. 1007; Pub. L. 102–237, title V, §502(g), Dec. 13, 1991, 105 Stat. 1869.)

EDITORIAL NOTES

AMENDMENTS

1991—Pub. L. 102–237 made technical amendment to reference to section 2098 of this title to reflect change in reference to corresponding section of original act.

1988—Pub. L. 100–399 inserted "or associations" and substituted "2023, 2098," for "2055, 2079,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

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.

§2214a. "Bank" defined

In this part, the term "bank" includes each association operating under subchapter II.

(Pub. L. 92–181, title IV, §4.28A, as added Pub. L. 104–105, title II, §209, Feb. 10, 1996, 110 Stat. 174.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 4.28A of title IV of Pub. L. 92–181, which provided for chartering of Farm Credit System Capital Corporation by Farm Credit Administration and revoked charter of Farm Credit System Capital Corporation which had been issued under part D of this subchapter, was classified to section 2216 of this title, prior to repeal by Pub. L. 100–233, title II, §207(a)(3), Jan. 6, 1988, 101 Stat. 1607.

PART D1—FARM CREDIT SYSTEM CAPITAL CORPORATION

§§2216 to 2216k. Repealed. Pub. L. 100–233, title II, §207(a)(3), Jan. 6, 1988, 101 Stat. 1607

Section 2216, Pub. L. 92–181, title IV, §4.28A, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1680, provided for chartering of Farm Credit System Capital Corporation by Farm Credit Administration and revoked charter of Farm Credit System Capital Corporation which had been issued under part D of this subchapter.

Section 2216a, Pub. L. 92–181, title IV, §4.28B, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1680, set out purposes of Capital Corporation.

Section 2216b, Pub. L. 92–181, title IV, §4.28C, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1680, provided for Board of Directors of Capital Corporation.

Section 2216c, Pub. L. 92–181, title IV, §4.28D, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, provided for compensation of members of Board of Directors of Capital Corporation.

Section 2216d, Pub. L. 92–181, title IV, §4.28E, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, authorized Board of Directors of Capital Corporation to adopt rules.

Section 2216e, Pub. L. 92–181, title IV, §4.28F, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, provided for selection of chief executive officer of Capital Corporation.

Section 2216f, Pub. L. 92–181, title IV, §4.28G, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1682, enumerated corporate powers of Capital Corporation.

Section 2216g, Pub. L. 92–181, title IV, §4.28H, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1685, provided for succession of Capital Corporation.

Section 2216h, Pub. L. 92–181, title IV, §4.28I, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1685, set out provisions limiting powers of Capital Corporation.

Section 2216i, Pub. L. 92–181, title IV, §4.28J, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1686, set out authority of Secretary of the Treasury.

Section 2216j, Pub. L. 92–181, title IV, §4.28K, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1687, provided for initial capitalization of Capital Corporation.

Section 2216k, Pub. L. 92–181, title IV, §4.28L, as added Pub. L. 99–205, title I, §103, Dec. 23, 1985, 99 Stat. 1687, provided for tax status of consolidated obligations.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective 15 days after Jan. 6, 1988, see section 207(b) of Pub. L. 100–233, set out as a note under section 2152 of this title.

PART F—SALE OF INSURANCE

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–399, title VII, §702(c), Aug. 17, 1988, 102 Stat. 1006, redesignated part G as F.

Pub. L. 100–233, title VIII, §805(u), Jan. 6, 1988, 101 Stat. 1716, redesignated part E as G.

§2218. Lines of insurance

(a) Regulatory authorization

(1) The regulations of the Farm Credit Administration governing financially related services that the banks and associations of the Farm Credit System may provide under subchapters I and II of this chapter may authorize the sale to any member of or borrower from any such bank or association, on an optional basis, of credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtors and other insurance necessary to protect

the member's farm or aquatic unit, but limited to, hail and multiple-peril crop insurance, title insurance, and insurance to protect the facilities and equipment of aquatic borrowers. A member or borrower shall have the option, without coercion from the bank or association of such member or borrower, to accept or reject such insurance.

(2) In making insurance available through private insurers, the banks shall approve the programs of more than two insurers for each type of insurance offered in the district, if more than two insurers for each type of insurance have proposed programs to a bank that will, in all likelihood, have long-term viability and meet the requirements of subsection (b)(2)(D). The banks may provide comparative information relating to costs and quality of approved programs and the financial conditions of approved companies. Associations shall offer at least two insurers for each program from among those approved by the Farm Credit Banks, if at least two insurers have been approved in accordance with this paragraph.

(b) Contents of regulations

Such regulations shall provide that—

(1) in any case in which insurance is required as a condition for a loan or other financial assistance from a bank or association, notice be given that it is not necessary to purchase the insurance from the bank or association and that the borrower has the option of obtaining the insurance elsewhere;

(2) such insurance services may be offered only if—

(A) the bank or association has the capacity to render insurance service under this chapter in an effective and efficient manner;

(B) there exists the probability that any insurance program under this chapter will generate sufficient revenue to cover all costs;

(C) rendering insurance service will not have an adverse effect on the bank's or association's credit or other operations;

(D) the insurance program has been approved by the bank or association from among specific programs made available to it by insurers—

(i) meeting reasonable financial and quality of service standards; and

(ii) licensed under State law to do business in the State; and

(E) in making insurance available through approved insurers, the board of directors of the association or bank selects and offers at least two approved insurers for each type of insurance made available to the members and borrowers, if at least two insurers have been approved in accordance with subsection (a)(2); and

(3) no bank or association shall directly or indirectly discriminate in any manner against any agent, broker, or insurer that is not affiliated with such bank or association, or against any party who purchases insurance through any such nonaffiliated insurance agent, broker, or insurer.

(c) Continuation of existing coverage

Notwithstanding any provision of this section to the contrary, any bank or association that on December 24, 1980, is offering insurance coverages not authorized by this section may continue to sell such coverages for a period of not more than one year from such date and may continue to service such coverages until their expiration.

(Pub. L. 92-181, title IV, §4.29, as added Pub. L. 96-592, title IV, §404, Dec. 24, 1980, 94 Stat. 3448; amended Pub. L. 100-233, title IV, §422(a), Jan. 6, 1988, 101 Stat. 1655; Pub. L. 100-399, title IV, §411, Aug. 17, 1988, 102 Stat. 1003; Pub. L. 101-624, title XVIII, §1834, Nov. 28, 1990, 104 Stat. 3833.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101-624, §1834(1), inserted ", if more than two insurers for each type of

insurance have proposed programs to a bank that will, in all likelihood, have long-term viability and meet the requirements of subsection (b)(2)(D)" before period at end of first sentence, and ", if at least two insurers have been approved in accordance with this paragraph" before period at end of third sentence.

Subsec. (b)(2)(E). Pub. L. 101-624, §1834(2), inserted before semicolon at end ", if at least two insurers have been approved in accordance with subsection (a)(2)".

1988—Subsec. (a). Pub. L. 100-233, §422(a)(1), designated existing provisions as par. (1), struck out "of this Act" to conform to style of original enactment, resulting in no change in text, inserted "or borrower from" before "any such bank", inserted provision at end giving a member or borrower the option, without coercion from the bank or association of such member or borrower, to accept or reject such insurance, and added par. (2).

Subsec. (a)(1). Pub. L. 100-399, §411(a), substituted "subchapters I and II of this chapter" for "sections 2019, 2033, 2076, and 2097 of this title".

Subsec. (a)(2). Pub. L. 100-399, §411(b), substituted "Farm Credit Banks" for "Federal intermediate credit banks".

Subsec. (b)(2). Pub. L. 100-233, §422(a)(2), redesignated cls. (i) to (iii) as subpars. (A) to (C), respectively, and added subpars. (D) and (E).

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

CONTINUATION OF PROGRAM

Pub. L. 100-233, title IV, §422(b), Jan. 6, 1988, 101 Stat. 1656, provided that: "Notwithstanding the amendments made to section 4.29 [12 U.S.C. 2218] by subsection (a), any insurance program offered by any bank or association of the Farm Credit System on the date of the enactment of this Act [Jan. 6, 1988] that does not meet the requirements of section 4.29, as so amended, may be continued until July 1, 1988."

PART G—MISCELLANEOUS

EDITORIAL NOTES

CODIFICATION

Pub. L. 100-399, title VII, §702(c), Aug. 17, 1988, 102 Stat. 1006, redesignated part H as G.

Pub. L. 100-233, title VIII, §805(u), Jan. 6, 1988, 101 Stat. 1716, redesignated part F as H.

§2219. Limitation on separate sale

If real property is acquired by any institution of the Farm Credit System through foreclosure, no institution of the Farm Credit System shall sell the surface rights to that real property to any person unless the institution also sells all mineral rights to that real property to that person.

(Pub. L. 92-181, title IV, §4.35, as added Pub. L. 99-205, title III, §306, Dec. 23, 1985, 99 Stat. 1709.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2219a. Right of first refusal

(a) General rule

Agricultural real estate that is acquired by an institution of the System as a result of a loan foreclosure or a voluntary conveyance by a borrower (hereinafter in this section referred to as the "previous owner") who, as determined by the institution, does not have the financial resources to avoid foreclosure (hereinafter in this section referred to as "acquired real estate") shall be subject to the right of first refusal of the previous owner to repurchase or lease the property, as provided in this section.

(b) Application of right of first refusal to sale of property

(1) Election to sell and notification

Within 15 days after an institution of the System first elects to sell acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right—

(A) to purchase the property at the appraised fair market value of the property, as established by an accredited appraiser; or

(B) to offer to purchase the property at a price less than the appraised value.

(2) Eligibility to purchase

To be eligible to purchase the property under paragraph (1), the previous owner must, within 30 days after receiving the notice required by such paragraph, submit an offer to purchase the property.

(3) Mandatory sale

An institution of the System receiving an offer from the previous owner to purchase the property at the appraised value shall, within 15 days after the receipt of such offer, accept such offer and sell the property to the previous owner.

(4) Permissive sale

An institution of the System receiving an offer from the previous owner to purchase the property at a price less than the appraised value may accept such offer and sell the property to the previous owner. Notice shall be provided to the previous owner of the acceptance or rejection of such offer within 15 days after the receipt of such offer.

(5) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System that rejects an offer from the previous owner to purchase the property at a price less than the appraised value may not sell the property to any other person—

(i) at a price equal to, or less than, that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to purchase the property at such price or under such terms and conditions.

(B) Notice

Notice of the opportunity in subparagraph (A) shall be provided to the previous owner by certified mail, and the previous owner shall have 15 days in which to submit an offer to purchase the property at such price or under such terms and conditions.

(c) Application of right of first refusal to leasing of property

(1) Election to lease and notification

Within 15 days after an institution of the System first elects to lease acquired real estate, or any portion of such real estate, the institution shall notify the previous owner by certified mail of the owner's right—

(A) to lease the property at a rate equivalent to the appraised rental value of the property, as established by an accredited appraiser; or

(B) to offer to lease the property at a rate that is less than the appraised rental value of the property.

(2) Eligibility to lease

To be eligible to lease the property under paragraph (1), the previous owner must, within 15 days after receiving the notice required by such paragraph, submit an offer to lease the property.

(3) Mandatory lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate equivalent to the appraised rental value of the property shall, within 15 days after the receipt of such offer, accept such offer and lease the property to the previous owner unless the institution determines that the previous owner—

(A) does not have the resources available to conduct a successful farming or ranching operation; or

(B) cannot meet all of the payments, terms, and conditions of such lease.

(4) Permissive lease

An institution of the System receiving an offer from the previous owner to lease the property at a rate that is less than the appraised rental value of the property may accept such offer and lease the property to the previous owner.

(5) Notice to previous owner

An institution of the System receiving an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property shall notify the previous owner of its acceptance or rejection of the offer within 15 days after the receipt of such offer.

(6) Rejection of offer of previous owner

(A) Duties of institution

An institution of the System rejecting an offer from the previous owner to lease the property at a rate less than the appraised rental value of the property may not lease the property to any other person—

(i) at a rate equal to or less than that offered by the previous owner; or

(ii) on different terms and conditions than those that were extended to the previous owner,

without first affording the previous owner an opportunity to lease the property at such rate or under such terms and conditions.

(B) Notice

Notice of the opportunity described in subparagraph (A) shall be given to the previous owner by certified mail, and the previous owner shall have 15 days after the receipt of such notice in which to agree to lease the property at such rate or under such terms and conditions.

(d) Public offerings

(1) Notification of previous owner

If an institution of the System elects to sell or lease acquired property or a portion thereof through a public auction, competitive bidding process, or other similar public offering, the institution shall notify the previous owner, by certified mail, of the availability of the property. Such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms and conditions to which such sale or lease will be subject.

(2) Priority

If two or more qualified bids in the same amount are received by the institution under paragraph (1), such bids are the highest received, and one of the qualified bids is offered by the previous owner, the institution shall accept the offer by the previous owner.

(3) Nondiscrimination

No institution of the System may discriminate against a previous owner in any public auction, competitive bidding process, or other similar public offering of property acquired by the institution from such person.

(e) Term or condition

For the purposes of this section, financing by a System institution shall not be considered to be a term or condition of a sale of acquired real estate.

(f) Financing

Notwithstanding any other provision of this section, a System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(g) Mailing of notice

Notwithstanding any other provision of this section, each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the previous owner.

(h) State laws

The rights provided in this section shall not diminish any such right of first refusal under the law of the State in which the property is located.

(i) Applicability

This section shall not apply to a bank for cooperatives.

(Pub. L. 92-181, title IV, §4.36, as added Pub. L. 99-205, title III, §306, Dec. 23, 1985, 99 Stat. 1709; amended Pub. L. 100-233, title I, §108, Jan. 6, 1988, 101 Stat. 1582; Pub. L. 100-399, title I, §104, Aug. 17, 1988, 102 Stat. 990.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100-233 amended section generally. Prior to amendment, section read as follows: "No institution of the Farm Credit System shall sell any real property that previously served as security for a loan in a tract larger than a normal family size farm in the vicinity of the property for less than the amount it can receive from the Capital Corporation."

Subsec. (b)(2). Pub. L. 100-399, §104(a), substituted "30" for "15".

Subsec. (b)(3). Pub. L. 100-399, §104(b), substituted "15" for "30".

Subsec. (g). Pub. L. 100-399, §104(c), substituted "previous owner" for "former borrower".

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.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2219b. Application of uninsured accounts

(a) In general

Money of a borrower held by a Farm Credit System institution in an uninsured voluntary or involuntary account as authorized under regulations issued by the Farm Credit Administration (as in

effect immediately before January 6, 1988), including all such other accounts known as "advanced payment accounts" or "future prepayment accounts" shall, in the event the institution is placed in liquidation, be immediately applied as payment against the indebtedness of any outstanding loans of such borrower.

(b) Regulations

The Farm Credit Administration shall promulgate regulations—

- (1) that define the term "uninsured voluntary or involuntary account"; and
- (2) to otherwise effectively carry out this section.

(Pub. L. 92–181, title IV, §4.37, as added Pub. L. 100–233, title I, §110, Jan. 6, 1988, 101 Stat. 1585.)

EDITORIAL NOTES

CODIFICATION

Another section 4.37 of Pub. L. 92–181 was renumbered section 4.38 and is classified to section 2219c of this title.

§2219c. Affirmative action

All institutions of the Farm Credit System with more than 20 employees shall establish and maintain an affirmative action program plan that applies the affirmative action standards otherwise applied to contractors of the Federal Government.

(Pub. L. 92–181, title IV, §4.38, formerly §4.37, as added Pub. L. 100–233, title IV, §427, Jan. 6, 1988, 101 Stat. 1657; renumbered §4.38, Pub. L. 100–399, title IV, §413, Aug. 17, 1988, 102 Stat. 1004; amended Pub. L. 115–334, title V, §5411(26), Dec. 20, 2018, 132 Stat. 4682.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 substituted "All" for "The Assistance Board established under section 2278a of this title and all".

§2219d. Encouragement of conservation practices

At the time a System institution or an agricultural mortgage loan originator (as defined in section 2279aa of this title) approves a loan made to a borrower that, in the opinion of the institution or originator, would be ineligible for a loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) by reason of subtitle B or C of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.), the institution or originator, as the case may be, shall encourage the borrower to contact the Department of Agriculture Soil Conservation Service to obtain information about soil conservation methods and practices.

(Pub. L. 92–181, title IV, §4.39, formerly §4.38, as added Pub. L. 100–233, title IV, §428, Jan. 6, 1988, 101 Stat. 1658; renumbered §4.39, Pub. L. 100–399, title IV, §413, Aug. 17, 1988, 102 Stat. 1004; amended Pub. L. 115–334, title V, §5411(27), Dec. 20, 2018, 132 Stat. 4682.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act, referred to in text, is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307, which is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and

Tables.

The Food Security Act of 1985, referred to in text, is Pub. L. 99–198, Dec. 23, 1985, 99 Stat. 1354. Subtitles B and C of title XII of the Food Security Act are classified generally to subchapters II (§3811 et seq.) and III (§3821 et seq.), respectively, of chapter 58 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of Title 7 and Tables.

AMENDMENTS

2018—Pub. L. 115–334 substituted "section 2279aa of this title)" for "section 2279aa(7) of this title)".

§2219e. Liability for making criminal referrals

(a) In general

Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, that discloses to a Government authority information proffered in good faith that may be relevant to a possible violation of any law or regulation shall not be liable to any person under any law of the United States or any State—

(1) for the disclosure; or

(2) for any failure to notify the person involved in the possible violation.

(b) No prohibition on disclosure

Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, may disclose information to a Government authority that may be relevant to a possible violation of any law or regulation.

(Pub. L. 104–105, title II, §221, Feb. 10, 1996, 110 Stat. 184.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Farm Credit System Reform Act of 1996, and not as part of the Farm Credit Act of 1971 which comprises this chapter.

SUBCHAPTER V—FARM CREDIT ADMINISTRATION ORGANIZATION

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–399, title IX, §901(o), (p), Aug. 17, 1988, 102 Stat. 1008, struck out "DISTRICT AND" before "FARM" in subchapter heading and struck out part A heading "District Organization".

PART A—District Organization

§2221. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 92–181, title V, §5.0, Dec. 10, 1971, 85 Stat. 614; Pub. L. 96–592, title V, §501, Dec. 24,

1980, 94 Stat. 3448; Pub. L. 99-205, title II, §205(g)(1), Dec. 23, 1985, 99 Stat. 1706; Pub. L. 100-233, title VIII, §805(v), Jan. 6, 1988, 101 Stat. 1716; Pub. L. 100-399, title IX, §901(q), (r), Aug. 17, 1988, 102 Stat. 1008, which related to creation of districts, was transferred to section 1.2(b) of Pub. L. 92-181 by section 901(r) of Pub. L. 100-399 and is classified to section 2002(b) of this title.

§§2222 to 2227. Repealed. Pub. L. 100-399, title IV, §409(d), Aug. 17, 1988, 102 Stat. 1003

Sections 2222 to 2227 were directed to be repealed by Pub. L. 100-233, title IV, §418(c), formerly §415(c), Jan. 6, 1988, 101 Stat. 1653, renumbered §418(c), Pub. L. 100-399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003, which was repealed by section 409(c) of Pub. L. 100-399, title IV, Aug. 17, 1988, 102 Stat. 1003.

Section 409(c) of Pub. L. 100-399 provided in part that section 418(c) of Pub. L. 100-233 is repealed and that this chapter shall be applied and administered, and the amendments by sections 430 and 802(u) of Pub. L. 100-233 (amending sections 2226 and 2223, respectively, of this title) shall take effect, as if such section 418(c) had not been enacted.

Section 2222, Pub. L. 92-181, title V, §5.1, Dec. 10, 1971, 85 Stat. 614; Pub. L. 99-205, title II, §205(g)(2), Dec. 23, 1985, 99 Stat. 1707, related to district boards of directors, membership, eligibility, and terms.

Section 2223, Pub. L. 92-181, title V, §5.2, Dec. 10, 1971, 85 Stat. 614; Pub. L. 96-592, title V, §502, Dec. 24, 1980, 94 Stat. 3449; Pub. L. 99-205, title II, §205(g)(3), (4), title VI, §607, Dec. 23, 1985, 99 Stat. 1707, 1712; Pub. L. 100-233, title VIII, §802(u), Jan. 6, 1988, 101 Stat. 1712, related to nomination and election of district directors.

Section 2224, Pub. L. 92-181, title V, §5.3, Dec. 10, 1971, 85 Stat. 615, related to functions of district directors.

Section 2225, Pub. L. 92-181, title V, §5.4, Dec. 10, 1971, 85 Stat. 615, related to district board officers.

Section 2226, Pub. L. 92-181, title V, §5.5, Dec. 10, 1971, 85 Stat. 616; Pub. L. 100-233, title IV, §430, Jan. 6, 1988, 101 Stat. 1658, related to compensation of district boards.

Section 2227, Pub. L. 92-181, title V, §5.6, Dec. 10, 1971, 85 Stat. 616; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3784; Pub. L. 99-205, title II, §205(g)(5), Dec. 23, 1985, 99 Stat. 1707, related to powers of district farm credit board.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective immediately after amendments made by section 401 of Pub. L. 100-233, which were effective 6 months after Jan. 6, 1988, see section 1001(b) of Pub. L. 100-399, set out as an Effective Date of 1988 Amendment note under section 2002 of this title.

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

EXECUTIVE DOCUMENTS

EX. ORD. NO. 6084. REORGANIZING AGRICULTURAL CREDIT AGENCIES OF THE UNITED STATES

Ex. Ord. No. 6084, Mar. 27, 1933, provided in part: . . . it is hereby ordered that:

(1) The functions of the Secretary of Agriculture as a member of the Federal Farm Board, and the offices of the appointed members of the Federal Farm Board, except the office of the member designated as chairman thereof, are abolished.

(2) The name of the Federal Farm Board is changed to the Farm Credit Administration.

(3) The name of the office of Chairman of the Federal Farm Board is changed to Governor of the Farm Credit Administration, and he is vested with all the powers and duties of the Federal Farm Board.

(4) The functions of the Secretary of the Treasury as a member of the Federal Farm Loan Board, and the offices of the appointed members of the Federal Farm Loan Board, except the office of the member designated

as farm loan commissioner, are abolished, and all the powers and functions of the Federal Farm Loan Board, are transferred to and vested in the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration as herein provided.

(5) There are transferred to the jurisdiction and control of the Farm Credit Administration:

(a) The Federal Farm Loan Bureau and the functions thereof; together with the functions of the Federal Farm Loan Board, including the functions of the Farm Loan Commissioner;

(b) The functions of the Treasury Department and the Department of Agriculture, and the Secretaries thereof, under Executive authorizations to give aid to farmers, dated July 26, 1918, and any extensions or amendments thereof;

(c) The functions of the Secretary of Agriculture under all provisions of law relating to the making of advances or loans to farmers, fruit growers, producers and owners of livestock and crops, and to individuals for the purpose of assisting in forming or increasing the capital stock of agricultural-credit corporations, livestock-loan companies, or like organizations, except Public Resolution No. 74, Seventieth Congress, approved December 21, 1928, providing for the Puerto Rican Hurricane Relief Commission;

(d) The Crop Production Loan Office and the Seed Loan Office of the Department of Agriculture, and the functions thereof;

(e) The functions of the Reconstruction Finance Corporation and its Board of Directors relating to the appointment of officers and agents to manage regional agricultural credit corporations formed under [former] section 201(e) of the Emergency Relief and Construction Act of 1932 [former 12 U.S.C. 1148]; relating to the establishment of rules and regulations for such management; and relating to the approval of loans and advances made by such corporations and of the terms and conditions thereof.

(6) The functions vested in the Federal Farm Board by section 9 of the Agricultural Marketing Act [section 1141g of this title] are abolished except that such functions shall continue to be exercised to such extent and for such time as may be necessary to permit the orderly winding up of the activities of stabilization corporations heretofore recognized under authority of such section, and the governor of the Farm Credit Administration shall take appropriate action for winding up at the earliest practicable date the activities of such corporations and all affairs related to the exercise of such functions.

(7) The records, property (including office equipment), and personnel used and employed in the execution of the functions hereinbefore transferred are transferred to the jurisdiction and control of the Farm Credit Administration.

(8) The sum of \$2,000,000 of the unexpended balances of appropriations made to the Federal Farm Board by Public Resolutions No. 43 and No. 51 of the Seventy-second Congress shall be impounded and returned to the Treasury, which sum shall be in addition to the other savings to be effected by the Farm Credit Administration as a result of this order.

(9) The unexpended balances of appropriations to the Secretary of Agriculture, the Federal Farm Loan Bureau, and the Federal Farm Board for salaries, expenses, and all other administrative expenditures in the execution of the functions herein vested in the Farm Credit Administration shall be transferred to and vested in the Farm Credit Administration as a single fund for its use for salaries, expenses, and all other administrative expenditures for the execution of any or all of such functions without restriction as to the particular functions for the execution of which the same were originally appropriated. All other appropriations, allotments, and other funds available for use in connection with the functions and executive agencies hereby transferred and consolidated are hereby transferred to and vested in the Farm Credit Administration, and shall be available for use by it, for the same purposes as if the Farm Credit Administration were named in the law or authority providing such appropriations, allotments, or other funds.

(10) All power, authority, and duties conferred by law upon any officer, executive agency, or head thereof, from which or from whom transfer is hereinbefore made, in relation to the executive agency or function transferred, are transferred to and vested in the Governor of the Farm Credit Administration.

(11) The Governor of the Farm Credit Administration is directed to dismiss, furlough, transfer, or make other appropriate disposition of such of the officers and employees under his jurisdiction and control as are not required for the proper execution of the functions of the Farm Credit Administration.

(12) The Governor of the Farm Credit Administration is authorized to execute any and all functions and perform any and all duties vested in him through such persons as he shall by order designate or employ.

(13) The Governor of the Farm Credit Administration, by order or rules and regulations, may consolidate, regroup, and transfer offices, bureaus, activities, and functions in the Farm Credit Administration, so far as may be required to carry out the purposes to which this order is directed, and may fix or change the names of such offices, bureaus, and activities and the duties, powers, and titles of their executive heads.

This order shall take effect upon the sixty-first calendar day after its transmission to Congress unless otherwise determined in accordance with the provisions of section 407 of the act cited above, as amended.

FRANKLIN D. ROOSEVELT.

[All functions, powers and duties of the Governor of the Farm Credit Administration which relate to the making, administration, and liquidation of all loans identified or referred to in pars. 5(b), 5(c), and 5(d) of this Executive Order were abolished by act Aug. 14, 1946, ch. 964, §2(a)(2), 60 Stat. 1062, set out as a note under sections 1001 to 1006 of Title 7, Agriculture.]

§2241. Farm Credit Administration

The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this chapter.

(Pub. L. 92-181, title V, §5.7, Dec. 10, 1971, 85 Stat. 617; Pub. L. 99-205, title II, §201(1), Dec. 23, 1985, 99 Stat. 1688.)

EDITORIAL NOTES

AMENDMENTS

1985—Pub. L. 99-205 amended section generally, substituting "Farm Credit Administration Board and such other personnel" for "Federal Farm Credit Board, the Governor of the Farm Credit Administration, and such other personnel".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

Pub. L. 99-205, title IV, §402, Dec. 23, 1985, 99 Stat. 1709, provided that:

"(a) Until the Chairman of the Farm Credit Administration Board provided for under the amendment made by section 201(1) of this Act [see section 2242 of this title] is appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 [this chapter] as in effect on the day before the date of enactment of this Act [Dec. 23, 1985], shall perform the functions of the Chairman prescribed for the Chairman by this Act [Pub. L. 99-205, see Short Title of 1985 Amendment note set out under section 2001 of this title].

"(b)(1) Except as provided in paragraph (2), until at least two members of the Farm Credit Administration Board provided under the amendment made by section 201(1) of this Act [see section 2242 of this title] are appointed by the President and confirmed by the Senate, the Governor of the Farm Credit Administration, under the Farm Credit Act of 1971 [this chapter] as in effect on the day before the date of enactment of this Act [Dec. 23, 1985], shall perform the functions of the Farm Credit Administration Board prescribed for such Board by this Act [Pub. L. 99-205, see Short Title of 1985 Amendment note set out under section 2001 of this title].

"(2) When the Chairman of such Board is so appointed and confirmed, the Chairman shall assume any responsibilities and powers of the Board being exercised by the Governor under this subsection.

"(c) In carrying out the duties and functions specified in subsections (a) and (b), the Governor of the Farm Credit Administration shall serve at the pleasure of the President.

"(d) All regulations of the Farm Credit Administration or the institutions of the System, and all charters, bylaws, resolutions, stock classifications, and policy directives issued or approved by the Farm Credit Administration, and all elections held and appointments made under the Farm Credit Act of 1971 [this chapter], before the date of enactment of this Act [Dec. 23, 1985], shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act [Pub. L. 99-205, see Short Title of 1985 Amendment note set out under section 2001 of this title]."

§2242. Farm Credit Administration Board

(a) Appointment

The management of the Farm Credit Administration shall be vested in a Farm Credit Administration Board (referred to in this part as "the Board"). The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party. Of the persons thus appointed, one shall be designated by the President to serve as Chairman of the Board for the duration of the member's term. The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

(b) Terms of office

The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, first appointed under subsection (a) shall expire, one on the expiration of two years after the date of appointment, and one on the expiration of four years after the date of appointment. Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) for a term of less than six years may be reappointed for a full six-year term and members appointed to fill unexpired terms of three years or less may be reappointed for a full six-year term. Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as such after the expiration of the member's term until a successor has been appointed and qualified.

(c) Organization

Each member of the Board, within fifteen days after notice of appointment, shall subscribe to the oath of office. The Board may transact business if a vacancy exists, provided a quorum is present. A quorum shall consist of two members of the Board. The Board shall hold at least one meeting each month and such additional meetings at such times and places as it may fix and determine. Such meetings shall be held on the call of the Chairman or any two Board members. The Board shall adopt such rules as it deems appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

(d) Compensation

The members of the Board shall devote their full time and attention to the business of the Board. The Chairman of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5. Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5. Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the member's official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. This subsection shall be subject to the provisions of section 2245 of this title.

(e) Qualifications of Farm Credit Administration Board members

The President shall appoint members of the Board who—

- (1) are experienced or knowledgeable in agricultural economics and financial reporting and disclosure;
- (2) are experienced or knowledgeable in the regulation of financial entities; or
- (3) have a strong financial, legal, or regulatory background.

(Pub. L. 92-181, title V, §5.8, Dec. 10, 1971, 85 Stat. 617; Pub. L. 96-592, title V, §503, Dec. 24, 1980, 94 Stat. 3449; Pub. L. 99-205, title II, §201(1), Dec. 23, 1985, 99 Stat. 1688; Pub. L. 100-233, title IV, §431(a), Jan. 6, 1988, 101 Stat. 1658; Pub. L. 102-552, title I, §102, Oct. 28, 1992, 106 Stat. 4103.)

EDITORIAL NOTES

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–552 added subsec. (e).

1988—Subsec. (c). Pub. L. 100–233 amended last sentence generally, substituting "business by the Board," for "its business" and "the actions and proceedings of the Board" for "its acts and proceedings".

1985—Pub. L. 99–205 amended section generally, substituting provisions of subsecs. (a) to (d) relating to the Farm Credit Administration Board for provisions of former subsecs. (a) to (i) which related to the Federal Farm Credit Board.

1980—Subsec. (h). Pub. L. 96–592 substituted provisions relating to applicability of compensation under section 5332 of title 5, for provisions setting forth compensation at the rate of \$100 a day.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§2243. Powers of Board

The Board shall manage and administer, and establish policies for, the Farm Credit Administration. It—

(1) shall approve the rules and regulations for the implementation of this chapter not inconsistent with its provisions;

(2) shall provide for the examination of the condition of, and general regulation of the performance of the powers, functions, and duties vested in, each institution of the Farm Credit System;

(3) shall provide for the performance of all the powers and duties vested in the Farm Credit Administration; and

(4) may require such reports as it deems necessary from the institutions of the Farm Credit System.

(Pub. L. 92–181, title V, §5.9, Dec. 10, 1971, 85 Stat. 619; Pub. L. 99–205, title II, §201(1), Dec. 23, 1985, 99 Stat. 1689; Pub. L. 100–233, title VIII, §805(w), Jan. 6, 1988, 101 Stat. 1716.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–233 struck out "; civil proceedings" in section catchline.

1985—Pub. L. 99–205 substituted requirement that the Board manage and administer, and establish policies for, the Farm Credit Administration for former requirement that the Federal Farm Credit Board establish the general policy for the guidance of the Farm Credit Administration, including matters of broad and general supervisory, advisory, or policy nature; incorporated existing text in provisions designated cls. (1) to (4); substituted in cl. (2) "general regulation" for "general supervision"; and struck out last sentence which read as follows: "The Board shall function as a unit without delegating any of its functions to individual members, but may appoint committees and subcommittees for studies and reports for consideration by the Board. It shall not operate in an administrative capacity."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99-205, see section 402 of Pub. L. 99-205, set out as a note under section 2241 of this title.

§2244. Chairman; responsibilities; governing standards

(a) Chairman of Farm Credit Administration Board; power and authority

(1) The Chairman of the Board shall be the chief executive officer of the Farm Credit Administration.

(2) In carrying out the responsibilities of the chief executive officer, the Chairman shall be responsible for directing the implementation of policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration.

(3) In carrying out policies as directed by the Board, the Chairman shall act as spokesperson for the Board and represent the Board and the Farm Credit Administration in their official relations within the Federal Government.

(4) Under policies adopted by the Board, the Chairman shall consult on a regular basis with—

(A) the Secretary of the Treasury concerning the exercise, by the System, of the powers conferred under section 2153 of this title;

(B) the Board of Governors of the Federal Reserve System concerning the effect of System lending activities on national monetary policy; and

(C) the Secretary of Agriculture concerning the effect of System policies on farmers, ranchers, and the agricultural economy.

(b) Governing standards

In carrying out responsibilities under this chapter, the Chairman of the Board shall be governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make and, as to third persons, all acts of the Chairman of the Board shall be conclusively presumed to be in compliance with such general policies and regulatory decisions, findings, and determinations.

(c) Enforcement of rules, regulations, and orders of Board; civil proceedings; representation by attorneys

The Chairman of the Board shall enforce the rules, regulations, and orders of the Board. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman shall represent the Farm Credit Administration in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships. Attorneys designated by the Chairman may represent the Farm Credit Administration in any other civil proceedings or civil action when so authorized by the Attorney General under provisions of title 28.

(Pub. L. 92-181, title V, §5.10, Dec. 10, 1971, 85 Stat. 619; Pub. L. 96-592, title V, §504, Dec. 24, 1980, 94 Stat. 3449; Pub. L. 99-205, title II, §201(1), Dec. 23, 1985, 99 Stat. 1689; Pub. L. 100-233, title IV, §431(b), Jan. 6, 1988, 101 Stat. 1658.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-233 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as

follows: "The Chairman of the Board shall be the executive officer of the Board and the chief executive officer of the Farm Credit Administration. The Chairman shall be responsible for directing the implementation of the policies and regulations adopted by the Board and the execution of all of the administrative functions and duties of the Farm Credit Administration. The Chairman shall be the spokesman for the Board and the Farm Credit Administration and shall represent the Board and the Farm Credit Administration in their official relations within the Government. Under policies adopted by the Board, the Chairman shall consult on a regular basis with the Secretary of the Treasury in connection with the exercise by the System of the powers conferred under section 2153 of this title, with the Board of Governors of the Federal Reserve System in connection with the effect of System lending activities on national monetary policy, and with the Secretary of Agriculture in connection with the effect of System policies on farmers and the agricultural economy."

1985—Pub. L. 99–205 substituted provisions relating to the Chairman of the Board, his responsibilities, and governing standards for provisions relating to the Governor of the Farm Credit Administration.

1980—Pub. L. 96–592 inserted provisions relating to requirements of the Governor to consult with the Secretary of the Treasury and the Governors of the Federal Reserve System.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§2245. Organization of Farm Credit Administration

(a) Policies of Board

The Chairman of the Farm Credit Administration Board, in carrying out the powers and duties vested in the Chairman by this chapter, and Acts supplementary thereto, shall be governed by policies of the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make.

(b) Appointments

The Chairman of the Board shall appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. The appointment by the Chairman of the heads of major administrative divisions under the Board shall be subject to the approval of the Board.

(c) Personnel

(1) Appointments by Board members

Personnel employed regularly and full-time in the immediate offices of Board members shall be appointed by each such Board member.

(2) Officers and employees

(A) Appointment, compensation, and benefits

The Chairman shall fix the compensation and number of, and appoint and direct, employees of the Administration. The Chairman may set and adjust the rates of basic pay for employees of the Administration without regard to the provisions of chapter 51, or subchapter III of chapter 53, of title 5. The Chairman may provide such additional compensation and benefits to employees of the Administration as is necessary to maintain comparability with the total amount of compensation and benefits provided by other Federal bank regulatory agencies. In

setting and adjusting the total amount of compensation and benefits for employees of the Administration, the Chairman shall consult with, and seek to maintain comparability with, other Federal bank regulatory agencies.

(B) "Other Federal bank regulatory agencies" defined

For purposes of this subsection, the term "other Federal bank regulatory agencies" has the same meaning given to the term "appropriate Federal banking agency" in section 1813(q) of this title.

(C) Ethics in Government

The officers and employees of the agency shall be—

- (i) subject to chapter 131 of title 5; and
- (ii) considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18.

(3) Delegation

The powers of the Chairman as chief executive officer necessary for day to day management may be exercised and performed by the Chairman through such other officers and employees of the Administration as the Chairman shall designate, except that the Chairman may not delegate powers specifically reserved to the Chairman by this chapter without Board approval.

(d) Funding

The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 2250 of this title.

(Pub. L. 92–181, title V, §5.11, Dec. 10, 1971, 85 Stat. 620; Pub. L. 99–205, title II, §201(1), Dec. 23, 1985, 99 Stat. 1690; Pub. L. 100–233, title IV, §431(c), title VIII, §805(x), Jan. 6, 1988, 101 Stat. 1659, 1716; Pub. L. 100–399, title IV, §415(a), title VII, §702(b), Aug. 17, 1988, 102 Stat. 1004, 1006; Pub. L. 101–73, title XII, §1210, Aug. 9, 1989, 103 Stat. 523; Pub. L. 117–286, §4(c)(23), Dec. 27, 2022, 136 Stat. 4357.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (c)(2)(C)(i). Pub. L. 117–286 substituted "chapter 131 of title 5;" for "the Ethics in Government Act of 1978;"

1989—Subsec. (c)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The officers and employees of the agency shall be—

"(A) subject to the Ethics in Government Act of 1978 (2 U.S.C. 701 et seq.);

"(B) considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of title 18; and

"(C) subject to section 5373 of title 5."

1988—Pub. L. 100–233, §805(x), which directed the amendment of this section by striking out the last sentence, was repealed by Pub. L. 100–399, §702(b). See Construction of 1988 Amendment note below.

Pub. L. 100–233, §431(c), amended section generally, substituting subsecs. (a) to (d) for former text consisting of single undesignated paragraph.

Subsec. (c)(2)(C). Pub. L. 100–399, §415(a), substituted "5373" for "5315".

1985—Pub. L. 99–205 substituted provisions respecting organization of the Farm Credit Administration for provisions relating to compensation and expense allowance of the Governor of the Farm Credit Administration.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 415(a) of 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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

CONSTRUCTION OF 1988 AMENDMENT

Pub. L. 100–399, title VII, §702(b), Aug. 17, 1988, 102 Stat. 1006, provided that section 805(x) of Pub. L. 100–233, cited as a credit to this section, is repealed and that this section shall be applied and administered as if such section had not been enacted.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§2246. Advisory committees

The Chairman of the Board, subject to the approval of the Board, may establish one or more advisory committees in accordance with chapter 10 of title 5 and may appoint to such committee or committees individuals who are members of the Federal Farm Credit Board when such Board is terminated by the Farm Credit Amendments Act of 1985.

(Pub. L. 92–181, title V, §5.12, Dec. 10, 1971, 85 Stat. 620; Pub. L. 99–205, title II, §201(1), Dec. 23, 1985, 99 Stat. 1690; Pub. L. 100–233, title IV, §431(d), Jan. 6, 1988, 101 Stat. 1660; Pub. L. 117–286, §4(a)(56), Dec. 27, 2022, 136 Stat. 4311.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Farm Credit Amendments Act of 1985, referred to in text, is Pub. L. 99–205, Dec. 23, 1985, 99 Stat. 1678. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 2001 of this title and Tables.

AMENDMENTS

2022—Pub. L. 117–286 substituted "chapter 10 of title 5" for "the Federal Advisory Committee Act".

1988—Pub. L. 100–233 inserted ", subject to the approval of the Board," after "Chairman of the Board".

1985—Pub. L. 99–205 substituted provisions respecting advisory committees for provisions respecting compliance by the Governor with orders of the Federal Farm Credit Board.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

INTERIM IMPLEMENTATION OF 1985 AMENDMENT

For provisions authorizing interim implementation by Governor of Farm Credit Administration of amendments to this section by Pub. L. 99–205, see section 402 of Pub. L. 99–205, set out as a note under section 2241 of this title.

§2247. Repealed. Pub. L. 99–205, title II, §201(2), Dec. 23, 1985, 99 Stat. 1690

Section, Pub. L. 92–181, title V, §5.13, Dec. 10, 1971, 85 Stat. 620, related to authority of Governor of the Farm Credit Administration to fix powers and duties of divisions and instrumentalities of the Administration.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2248. Seal of the Farm Credit Administration

The Farm Credit Administration shall have a seal, as adopted by the Board, which shall be judicially noted.

(Pub. L. 92-181, title V, §5.13, formerly §5.14, Dec. 10, 1971, 85 Stat. 620; renumbered §5.13 and amended Pub. L. 99-205, title II, §201(3), Dec. 23, 1985, 99 Stat. 1690.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.13 of Pub. L. 92-181 was classified to section 2247 of this title prior to repeal by Pub. L. 99-205, title II, §201(2), Dec. 23, 1985, 99 Stat. 1690.

AMENDMENTS

1985—Pub. L. 99-205 substituted "Board" for "Governor".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

§2249. Administrative expenses

The Farm Credit Administration may, within the limits of funds available therefor, make necessary expenditures for personnel services and rent at the seat of Government and elsewhere; contract stenographic reporting services; purchase and exchange lawbooks, books of reference, periodicals, newspapers, expenses of attendance at meetings and conferences; purchase, operation, and maintenance at the seat of Government and elsewhere of motor-propelled passenger-carrying vehicles and other vehicles; printing and binding; and for such other facilities and services, including temporary employment by contract or otherwise, as it may from time to time find necessary for the proper administration of this chapter. The Farm Credit Administration may dispose of property so acquired and any amounts collected from the disposition of such property shall be deposited in the special fund provided for in section 2250(b) of this title and shall be available to the Administration in the same manner and for the same purposes as the funds collected under section 2250(a) of this title.

(Pub. L. 92-181, title V, §5.14, formerly §5.15, Dec. 10, 1971, 85 Stat. 620; Pub. L. 96-592, title V, §505, Dec. 24, 1980, 94 Stat. 3449; renumbered §5.14 and amended Pub. L. 99-205, title II, §201(4), Dec. 23, 1985, 99 Stat. 1690.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.14 of Pub. L. 92-181 was renumbered section 5.13 and is classified to section 2248 of this title.

AMENDMENTS

1985—Pub. L. 99–205 made technical amendments to the references to sections 2250(b) and 2250(a) of this title appearing in second sentence to reflect the renumbering of the corresponding section of the original act.

1980—Pub. L. 96–592 inserted provisions relating to disposal of property and deposit of amounts from such disposal.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2250. Farm Credit Administration operating expenses fund

(a) Determinations required

(1) Generally

Prior to the first day of each fiscal year, the Farm Credit Administration shall determine—

(A) the cost of administering this chapter for the subsequent fiscal year, including expenses for official functions;

(B) the amount of assessments that will be required to pay such administrative expenses, taking into consideration the funds contained in the Administrative Expense Account, and maintain a necessary reserve; and

(C) the amount of assessments that will be required to pay the costs of supervising and examining the Mortgage Corporation established under subchapter VIII.

(2) Apportionments

On the basis of the determinations made under paragraph (1), the Farm Credit Administration shall—

(A) apportion the amount of the assessment described in paragraph (1)(B) among the System institutions on a basis that is determined to be equitable by the Farm Credit Administration;

(B) assess and collect such apportioned amounts from time to time during the fiscal year as determined necessary by the Farm Credit Administration; and

(C) assess and collect from the Mortgage Corporation, from time to time during the fiscal year, the amount described in paragraph (1)(C).

(b) Deposits into fund

(1) Treasury fund

The amounts collected under subsection (a) shall be deposited in the Farm Credit Administration Administrative Expense Account. The Expense Account shall be maintained in the Treasury of the United States and shall be available, without regard, for purposes of sequestration, to the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.], to pay the expenses of the Farm Credit Administration.

(2) Nongovernment funds

The funds contained in the Expense Account shall not be construed to be Federal Government funds or appropriated moneys.

(3) Investment

(A) Authority

On request of the Farm Credit Administration, the Secretary of the Treasury shall invest and reinvest such amounts contained in the Expense Account as, in the determination of the Farm Credit Administration, are in excess of the amounts necessary for current expenses of the Farm Credit Administration.

(B) Returns

All income earned from such investments and reinvestments shall be deposited in the Expense Account.

(C) Type

Such investments shall be made in public debt securities with maturities suitable to the needs of the Expense Account, as determined by the Farm Credit Administration, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(Pub. L. 92-181, title V, §5.15, formerly §5.16, Dec. 10, 1971, 85 Stat. 620; renumbered §5.15 and amended Pub. L. 99-205, title II, §§201(5), 205(g)(6), Dec. 23, 1985, 99 Stat. 1690, 1707; Pub. L. 100-233, title IV, §432(a), Jan. 6, 1988, 101 Stat. 1660; Pub. L. 100-399, title IV, §416(a), (b), Aug. 17, 1988, 102 Stat. 1004; Pub. L. 102-552, title V, §510, Oct. 28, 1992, 106 Stat. 4132.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (b)(1), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 5.15 of Pub. L. 92-181 was renumbered section 5.14 and is classified to section 2249 of this title.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-552 inserted ", for purposes of sequestration," after "regard" and struck out "or any other law" before ", to pay the expenses".

1988—Pub. L. 100-233 amended section generally. Prior to amendment, section read as follows:

"(a) The Farm Credit Administration shall prior to the first day of each fiscal year estimate the cost of administrative expenses for the ensuing fiscal year in administering this chapter, including official functions, and shall apportion the amount so determined among the institutions of the System on such equitable basis as the Farm Credit Administration shall determine, and shall assess against and collect in advance the amounts so apportioned from the institutions among which the apportionment is made.

"(b) The amounts collected pursuant to subsection (a) of this section shall be covered into the Treasury, and credited to a special fund and, without regard to other law, shall be available to the Farm Credit Administration for expenditure during each fiscal year for salaries and expenses of the Farm Credit Administration. As soon as practicable after the end of each such fiscal year, the Farm Credit Administration shall determine, on a fair and reasonable basis, the cost of operation of the Farm Credit Administration and the part thereof which fairly and equitably should be allocated to each bank and association as its share of the cost during the fiscal year of the Farm Credit Administration. If the amount so allocated is greater than the amount collected from the bank or other institutions, the difference shall be collected from such bank or other institutions, and, if less, shall be refunded from the special fund to the bank or other institutions entitled thereto or credited in the special fund to such bank or other institutions for use for the same purposes in future fiscal years."

Subsec. (a)(2)(A). Pub. L. 100-399, §416(a), substituted "the assessment described in paragraph (1)(B)" for "such assessment".

Subsec. (a)(2)(C). Pub. L. 100-399, §416(b), substituted "described" for "specified".

1985—Subsec. (b). Pub. L. 99-205, §205(g)(6), substituted "the Farm Credit Administration" for "said Administration" twice in first sentence, and for "the Administration" and "such Administration" in second sentence.

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2251. Quarters and facilities for the Farm Credit Administration

(a) Location of principal office

The Farm Credit Administration shall maintain its principal office within the Washington D.C.-Maryland-Virginia standard metropolitan statistical area, and such other offices within the United States as in its judgment are necessary.

(b) Alternate property authorizations for System banks

As an alternate to the rental of quarters under section 2249 of this title, and without regard to any other provision of law, the banks of the System, with the concurrence of two-thirds of the bank boards, are hereby authorized—

(1) To lease or acquire real property in the District of Columbia or elsewhere for quarters of the Farm Credit Administration.

(2) To construct, develop, furnish, and equip such building thereon and such facilities appurtenant thereto as in their judgment may be appropriate to provide, to the extent the Board may deem advisable, suitable, and adequate quarters and facilities for the Farm Credit Administration.

(3) To enlarge, remodel, or reconstruct the same.

(4) To make or enter into contracts for any of the foregoing.

(5) To sell or otherwise dispose of any interest in property leased or acquired under the foregoing if authorized by the Board.

(c) Financing

(1) In general

The Board may require of the respective banks of the System, and they shall make to the Farm Credit Administration, such advances of funds for the purposes set out in this section as in the sole judgment of the Board may from time to time be advisable for the purposes of this section.

(2) Advances

The advances of funds described in paragraph (1) shall be in addition to and kept in a separate fund from the assessments authorized in section 2250 of this title and shall be apportioned by the Board among the banks in proportion to the total assets of the respective banks, and determined in such manner and at such times as the Board may prescribe.

(3) Powers of banks

The powers of the banks of the System and purposes for which obligations may be issued by such banks are hereby enlarged to include the purpose of obtaining funds to permit the making of advances required by this section.

(4) Approval of board

The plans and decisions for such building and facilities and for the enlargement, remodeling, or reconstruction thereof shall be such as is approved in the sole discretion of the Board.

(5) Agent for banks

In actions undertaken by the banks pursuant to this section, the Farm Credit Administration may act as agent for the banks.

(Pub. L. 92–181, title V, §5.16, formerly §5.17, Dec. 10, 1971, 85 Stat. 621; Pub. L. 96–592, title V, §506, Dec. 24, 1980, 94 Stat. 3449; renumbered §5.16 and amended Pub. L. 99–205, title II, §201(6), Dec. 23, 1985, 99 Stat. 1690; Pub. L. 100–233, title VIII, §805(y), Jan. 6, 1988, 101 Stat. 1717; Pub. L. 100–399, title IX, §901(l), Aug. 17, 1988, 102 Stat. 1008; Pub. L. 115–334, title V, §§5405, 5411(28), Dec. 20, 2018, 132 Stat. 4676, 4682.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.16 of Pub. L. 92–181 was renumbered section 5.15 and is classified to section 2250 of this title.

AMENDMENTS

2018—Subsecs. (a), (b). Pub. L. 115–334, §5405, added subsec. (a) and designated existing introductory provisions and pars. (1) to (5) as subsec. (b).

Subsec. (c). Pub. L. 115–334, §5411(28), designated existing concluding provisions as subsec. (c) and first to fifth sentences thereof as pars. (1) to (5), respectively, and inserted subsec. and par. headings.

Subsec. (c)(2). Pub. L. 115–334, §5411(28)(D), substituted "The advances of funds described in paragraph (1)" for "Such advances".

Subsec. (c)(5). Pub. L. 115–334, §5411(28)(A), substituted "In actions undertaken by the banks pursuant to this section" for "In actions undertaken by the banks pursuant to the foregoing provisions of this section".

1988—Pub. L. 100–399 substituted "bank boards" for "district boards" in introductory provisions.

Pub. L. 100–233 transferred undesignated provisions following par. (4) consisting of four sentences relating to advances of funds for purposes set out in this section as in the sole judgment of the Board may from time to time be advisable for purposes of this section, to a position immediately before last sentence of this section which provides for agency status of Administration for the banks.

1985—Pub. L. 99–205, §201(6)(A)–(C), made technical amendments to the references to sections 2249 and 2250 of this title in first and third sentences to reflect the renumbering of the corresponding sections of the original act, and struck out "Federal Farm Credit" before "Board" in par. (2) of first sentence.

1980—Pub. L. 96–592 added par. (5) and provisions respecting agency status of Administration for the banks.

STATUTORY NOTES AND RELATED SUBSIDIARIES

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

§2252. Powers and duties

(a) Enumerated powers

The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this chapter:

(1) Modify the boundaries of farm credit districts, with due regard for the farm credit needs of the country, as approved by the Board, with the concurrence of the district banks involved.

(2) Where necessary or appropriate to carry out the policy and objectives of this chapter, issue and approve amendments to Federal charters of institutions of the System; approve change in

names of banks operating under this chapter; approve the merger of districts when agreed to by the district bank boards involved and by a majority vote of the voting stockholders and contributors to the guaranty funds of each bank for each of such districts, voting in the same manner as is provided in section 2279a of this title; approve mergers and any related activities as provided for in subchapter VII; and approve the consolidation or division of the territories of institutions when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved; and approve consolidations of boards of directors when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved. The Farm Credit Administration Board, after consultation with the respective boards of directors of the affected banks, may require two or more banks operating under the same or different titles to merge if the Board determines that one of such banks has failed to meet its outstanding obligations.

(3) Make annual reports directly to Congress on the condition of the System and its institutions, based on the examinations carried out under section 2254 of this title, and on the manner and extent to which the purposes and objectives of this chapter are being carried out and, from time to time, recommend directly legislative changes. The annual reports shall include a summary and analysis of the reports submitted to the Farm Credit Administration by the Farm Credit Banks under section 2207(b) of this title relating to programs for serving young, beginning, and small farmers and ranchers.

(4) Approve the issuance of obligations of the System under subsections (c) and (d) of section 2153 of this title for the purpose of funding the authorized operations of the institutions of the System, and prescribe collateral therefor.

(5) Grant approvals provided for under this chapter either on a case-by-case basis or through regulations that confer approval on actions of Farm Credit System institutions.

(6) Establish standards for the System institutions with respect to loan security requirements and regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System.

(7) Conduct loan and collateral security review.

(8) Regulate the preparation by System institutions and the dissemination to stockholders and investors of information on the financial condition and operations of such institutions, except that the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks, and the Farm Credit Administration may not require any System institution to disclose in any report to stockholders information concerning the condition or classification of a loan—

(A) to a director of the institution—

(i) who has resigned before the time for filing the applicable report with the Farm Credit Administration; or

(ii) whose term of office will expire no later than the date of the meeting of stockholders to which the report relates; or

(B) to a member of the immediate family of a director of the institution unless—

(i) the family member resides in the same household as the director; or

(ii) the director has a material financial or legal interest in the loan or business operation of the family member.

(9) Prescribe rules and regulations necessary or appropriate for carrying out this chapter.

(10) Exercise the powers conferred on it under part C of this subchapter for the purpose of ensuring the safety and soundness of System institutions.

(11) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this chapter.

(12) Require surety bonds or other provisions for protection of the assets of the institutions of the System against losses occasioned by employees.

(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under subchapter I or II, which would authorize the institution to exercise lending authority in any territory—

(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

(ii) in which the charter of an institution that is not seeking the charter amendment authorizes the institution to exercise the type of lending authority that is the subject of the charter request.

(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only on the approval of—

(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the Farm Credit System to operate under subchapter II where the proposed charter—

(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

(ii) will authorize the association to exercise lending authority in any territory in the geographic area in which the charter of an association that is not requesting the charter authorizes the association to exercise the type of lending authority that is the subject of the charter request.

(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only on the approval of—

(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

(15)(A) Approve amendments to the charters of institutions of the Farm Credit System to implement the equalization of loan-making powers of a Farm Credit System association under section 2279c of this title.

(B) Amendments described in subparagraph (A) to the charters of an association and the related Farm Credit Bank shall be approved by the Farm Credit Administration, subject to any conditions of approval imposed, by not later than 30 days after the date on which the Farm Credit Administration receives all approvals required by section 2279c(a)(2) of this title.

(b) Exclusions

The Farm Credit Administration shall not have authority, either direct or indirect, to approve bylaws, or any amendments or modifications or changes to bylaws, of System institutions.

(c) Proposed and final regulations; procedures applicable

(1) At least thirty days prior to publishing any proposed regulation in the Federal Register, the Farm Credit Administration shall transmit a copy of the regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Farm Credit Administration shall also transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in paragraph (2) of this subsection, no final regulation of the Farm Credit Administration shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of the Congress are in session.

(2) In the case of an emergency, a final regulation of the Farm Credit Administration may become effective without regard to the last sentence of paragraph (1) of this subsection if the Farm Credit Administration notifies in writing the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

(d) Legislative veto of regulations; procedures applicable

(1) If there are any unresolved differences between the Farm Credit Administration and the Board of Governors of the Federal Reserve System as to whether any regulation implementing section 2128(b) of this title or the other provisions of subchapter III relating to the authority under section 2128(b) of this title conforms to national banking policies, objectives and limitations, simultaneously with promulgation of any such regulation under this chapter, and simultaneously with promulgation of any regulation implementing section 2015(b) of this title, the Farm Credit Administration shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. Except as provided in paragraph (2), the regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulations promulgated by the Farm Credit Administration dealing with the matter of _____, which regulation was transmitted to Congress on _____", the blank spaces therein being appropriately filled.

(2) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, or either House has adopted such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided in paragraph (1).

(3) For the purposes of paragraphs (1) and (2) of this subsection—

- (i) continuity of session is broken only by an adjournment of Congress sine die; and
- (ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

(4) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

(Pub. L. 92-181, title V, §5.17, formerly §5.18, Dec. 10, 1971, 85 Stat. 621; Pub. L. 96-592, title V, §§507, 508, Dec. 24, 1980, 94 Stat. 3449; renumbered §5.17 and amended Pub. L. 99-205, title II, §201(7), Dec. 23, 1985, 99 Stat. 1691; Pub. L. 99-509, title I, §1036, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100-233, title II, §207(a)(2), title IV, §417, formerly §414, §418(d), formerly §415(d), §§424(a), 431(e), title VIII, §§802(v), 805(z), Jan. 6, 1988, 101 Stat. 1607, 1653, 1656, 1660, 1713, 1717, renumbered §§417, 418(d), Pub. L. 100-399, title IV, §409(a), Aug. 17, 1988, 102 Stat. 1003; Pub. L. 100-399, title II, §205, title IV, §409(e), title IX, §901(m), (n), Aug. 17, 1988, 102 Stat. 993, 1003, 1008; Pub. L. 101-624, title XVIII, §1843(a)(1), Nov. 28, 1990, 104 Stat. 3836; Pub. L.

102–237, title V, §502(h), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102–552, title IV, §401(c), title V, §511, Oct. 28, 1992, 106 Stat. 4128, 4132; Pub. L. 104–105, title II, §§210, 211, Feb. 10, 1996, 110 Stat. 174; Pub. L. 110–234, title V, §5407(b), (c)(1), May 22, 2008, 122 Stat. 1160; Pub. L. 110–246, §4(a), title V, §5407(b), (c)(1), June 18, 2008, 122 Stat. 1664, 1921, 1922; Pub. L. 115–334, title V, §5411(29), Dec. 20, 2018, 132 Stat. 4682.)

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.

PRIOR PROVISIONS

A prior section 5.17 of Pub. L. 92–181 was renumbered section 5.16 and is classified to section 2251 of this title.

AMENDMENTS

2018—Subsec. (a)(2). Pub. L. 115–334 struck out "In issuing charters and certificates of territory for district-wide mergers of associations where stockholders of one or more associations did not approve the merger, the charter of the new or merged association shall not include the territory of the disagreeing association or associations; charters issued during calendar year 1985 for district-wide new or merged associations which included the territory of a disagreeing association shall be revoked and reissued to exclude such territory, unless subsequently agreed to by the board of directors of such association or associations. The Farm Credit Administration Board shall ensure that disapproving associations (A) shall not be charged any assessment under this chapter at a rate higher than that charged other like associations in the district, and (B) shall be provided with financial services and assistance on the same basis as other like associations in the district (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the association and its member-borrowers." after "institutions involved."

2008—Subsec. (a)(2). Pub. L. 110–246, §5407(c)(1), substituted "(2)" for "(2)(A)" and struck out pars. (B) and (C) which prohibited issuance or amendment of the charter of any institution of the Farm Credit System that would authorize the institution to exercise lending authority in a territory in which the charter of another such institution authorized the other institution to exercise like authority, unless specified approvals were obtained, and provided that such prohibition would apply only in geographic areas where, due to the failure of a merger, the Federal intermediate credit bank or its successor was chartered to provide short- and intermediate-term credit, and a neighboring Farm Credit Bank that was not the successor to the Federal intermediate credit bank was chartered to provide long-term credit, in the same geographic territory.

Subsec. (a)(15). Pub. L. 110–246, §5407(b), added par. (15).

1996—Subsec. (a)(2)(A). Pub. L. 104–105, §210, struck out "or management agreements" after "consolidations of boards of directors" in first sentence.

Subsec. (a)(8). Pub. L. 104–105, §211, inserted "the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks, and" after "except that".

1992—Subsec. (a)(2). Pub. L. 102–552, §401(c), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (a)(13), (14). Pub. L. 102–552, §511, added pars. (13) and (14).

1991—Subsec. (a)(8)(B)(ii). Pub. L. 102–237 struck out second period at end.

1990—Subsec. (a)(13). Pub. L. 101–624 struck out par. (13) which read as follows: "Except for associations, approve the salary scale for employees of the institutions of the System, and approve the compensation of the chief executive officer of such institutions: *Provided*, That no salary scale or rate of compensation shall be approved under this provision unless determined by the Board to be fair and reasonable. The Board may not delegate its responsibilities under this paragraph."

1988—Subsec. (a)(1). Pub. L. 100–399, §901(m)(1), substituted "district banks" for "district boards".

Subsec. (a)(2). Pub. L. 100–399, §901(m)(2), substituted "district bank boards" for "boards of the districts".

Pub. L. 100–399, §409(e), substituted "approve the consolidation or division of the territories of institutions when agreed to" for "the consolidation or division of the territories that they serve when agreed to".

Pub. L. 100–233, §802(v)(1)(A), substituted "approve amendments to" for "amend or modify".

Pub. L. 100–233, §415(d), substituted "section 2279a of this title" for "section 2181 of this title" and

"approve mergers and any related activities as provided for in subchapter VII; and" for "; approve mergers of banks operating under the same subchapter of this chapter, merger of Federal land bank associations, merger of production credit associations, and".

Pub. L. 100-233, §414, substituted ". The Farm Credit Administration Board shall ensure that disapproving associations (A) shall not be charged any assessment under this chapter at a rate higher than that charged other like associations in the district, and (B) shall be provided with financial services and assistance on the same basis as other like associations in the district" for "; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this chapter at a rate higher than that charged other like associations in the district or (ii) discriminated against in the provision of any financial service and assistance".

Pub. L. 100-233, §431(e)(1), substituted "The Farm Credit Administration Board, after consultation with the respective boards of directors of the affected banks, may require two or more banks operating under the same or different titles to merge if the Board determines that one of such banks has failed to meet its outstanding obligations" for "The Chairman of the Farm Credit Administration Board, after consultation with the respective district board or boards and the board of directors of the Capital Corporation may require two or more banks of the Farm Credit System (other than Central Banks for Cooperatives) operating under the same subchapter to merge if the Chairman determines that one of such banks has failed to meet outstanding obligations of such bank."

Subsec. (a)(3). Pub. L. 100-399, §901(m)(3), substituted "Farm Credit Banks under section 2207(b) of this title" for "Federal land banks and Federal intermediate credit banks under section 2207(b) of this title".

Subsec. (a)(5). Pub. L. 100-233, §802(v)(1)(B), struck out "that meet standards and criteria established by the Farm Credit Administration, including standards and criteria with respect to (A) interest rates on obligations of Farm Credit System institutions, and (B) the payment of dividends or patronage refunds by Farm Credit System institutions" after "Farm Credit institutions".

Subsec. (a)(8). Pub. L. 100-399, §205, redesignated par. (9) as (8).

Pub. L. 100-233, §207(a)(2), struck out par. (8) which read as follows: "Make investments in stock of the Capital Corporation out of the revolving fund referred to in section 2151 of this title, and require the retirement of such stock."

Subsec. (a)(9). Pub. L. 100-399, §205, redesignated par. (10) as (9). Former par. (9) redesignated (8).

Pub. L. 100-233, §424(a), inserted provisions limiting Farm Credit Administration from requiring System institutions to disclose in reports to stockholders certain information concerning condition or classification of loans to certain directors or members of immediate family of certain directors.

Subsec. (a)(10) to (12). Pub. L. 100-399, §205, redesignated pars. (11) to (13) as (10) to (12), respectively. Former par. (10) redesignated (9).

Subsec. (a)(13). Pub. L. 100-399, §205, redesignated par. (14) as (13). Former par. (13) redesignated (12).

Pub. L. 100-233, §805(z), redesignated par. (14) as (13), and struck out former par. (13) which read as follows: "Sue and be sued, complain and defend in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Farm Credit Administration 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 of the controversy; and the Farm Credit Administration may, without bond or security, 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 now or hereafter in effect. Service of process on the Farm Credit Administration shall be in accordance with provisions of title 28 and rules adopted under title 28 for suits in which an agency of the United States is a party. The Farm Credit Administration shall designate an agent at its principal office to accept service of process."

Subsec. (a)(14). Pub. L. 100-399, §205, redesignated par. (14) as (13).

Pub. L. 100-233, §§431(e)(2), 805(z), redesignated par. (15) as (14) and inserted "by the Board" and "The Board may not delegate its responsibilities under this paragraph." Former subsec. (14) redesignated (13).

Subsec. (a)(15). Pub. L. 100-233, §805(z), redesignated par. (15) as (14).

Subsecs. (b), (c). Pub. L. 100-233, §802(v)(2), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100-233, §802(v)(2), redesignated subsec. (c) as (d).

Subsec. (d)(1). Pub. L. 100-399, §901(n)(1), made technical amendment to reference to sections 2015(b) and 2128(b) of this title involving underlying provisions of original act and requiring no change in text.

Pub. L. 100-399, §901(n), substituted "section 2015(b) of this title" for "section 2074 of this title".

1986—Subsec. (a)(5)(A). Pub. L. 99-509 struck out "and on loans made or discounted by such institutions"

after "Farm Credit System institutions".

1985—Subsec. (a). Pub. L. 99–205 amended subsec. (a) generally, revising and reorganizing the enumerated powers of the Farm Credit Administration by substituting pars. (1) to (15) for former pars. (1) to (17).

1980—Pub. L. 96–592 designated existing provisions as subsec. (a), in par. (3) inserted provisions relating to summary and analysis of reports, and added subsecs. (b) and (c).

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, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110–234, title V, §5407(d), May 22, 2008, 122 Stat. 1161, and Pub. L. 110–246, §4(a), title V, §5407(d), June 18, 2008, 122 Stat. 1664, 1922, provided that: "The amendments made by this section [enacting section 2279c of this title and amending this section and provisions set out as notes under section 2011 of this title] take effect on January 1, 2010."

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by sections 205 and 409(a), (e) of Pub. L. 100–399 effective as if enacted immediately after enactment of Pub. L. 100–233, which was approved Jan. 6, 1988, and amendment by section 901(m), (n) of 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 of Pub. L. 100–399, set out as a note under section 2002 of this title.

Amendment by section 207(a)(2) of Pub. L. 100–233 effective 15 days after Jan. 6, 1988, see section 207(b) of Pub. L. 100–233 set out as an Effective Date of Repeal note under section 2152 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as a note under section 2001 of this title.

REGULATIONS

Pub. L. 100–233, title IV, §424(b), Jan. 6, 1988, 101 Stat. 1656, provided that: "Within 30 days after the date of the enactment of this Act [Jan. 6, 1988], the Farm Credit Administration shall amend its regulations as necessary to implement the amendment made by subsection (a) [amending this section]."

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (a)(3) of this section relating to requirement to make annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 166 of House Document No. 103–7.

COMPENSATION DISCLOSURE BY FARM CREDIT SYSTEM INSTITUTIONS

Pub. L. 113–79, title V, §5404, Feb. 7, 2014, 128 Stat. 840, provided that:

"(a) **FINDINGS.**—Congress finds that—

"(1) the reasonable disclosure to stockholders by Farm Credit System institutions regarding the compensation of Farm Credit System institution senior officers is beneficial to stockholders' understanding of the operation of their institutions;

"(2) transparency regarding compensation practices reinforces the cooperative nature of Farm Credit System institutions;

"(3) the unique cooperative structure of the Farm Credit System should be considered when promulgating rules;

"(4) the participation of stockholders in the election of the boards of directors of Farm Credit System

institutions provides stockholders the opportunity to participate in the management of their institutions;

"(5) as representatives of stockholders, the boards of directors of Farm Credit System institutions importantly establish and oversee the compensation practices of Farm Credit System institutions to ensure the safe and sound operation of those institutions; and

"(6) any regulation should strengthen and not hinder the ability of Farm Credit System boards of directors to oversee compensation practices.

"(b) IMPLEMENTATION.—Not later than 60 days after the date of enactment of this Act [Feb. 7, 2014], the Farm Credit Administration shall review its rules to reflect Congressional intent that a primary responsibility of the boards of directors of Farm Credit System institutions, as elected representatives of their stockholders, is to oversee compensation practices."

REGULATORY REVIEW

Pub. L. 104–105, title II, §212, Feb. 10, 1996, 110 Stat. 174, provided that:

"(a) FINDINGS.—Congress finds that—

"(1) the Farm Credit Administration, in the role of the Administration as an arms-length safety and soundness regulator, has made considerable progress in reducing the regulatory burden on Farm Credit System institutions;

"(2) the efforts of the Farm Credit Administration described in paragraph (1) have resulted in cost savings for Farm Credit System institutions; and

"(3) the cost savings described in paragraph (2) ultimately benefit the farmers, ranchers, agricultural cooperatives, and rural residents of the United States.

"(b) CONTINUATION OF REGULATORY REVIEW.—The Farm Credit Administration shall continue the comprehensive review of regulations governing the Farm Credit System to identify and eliminate, consistent with law, safety, and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on law."

FORBEARANCE AND RESTRUCTURING FOR FARM LOANS; FARM CREDIT ADMINISTRATION

Pub. L. 100–387, title III, §313(b), Aug. 11, 1988, 102 Stat. 950, provided that: "It further is the sense of Congress that the Farm Credit Administration should in its oversight of Farm Credit System institutions, with respect to farmers and ranchers who suffer major losses due to drought, hail, excessive moisture, or related condition in 1988—

"(1) ensure that Farm Credit System institutions exercise forbearance in the collection of principal and interest on loans outstanding to such farmers and ranchers;

"(2) expedite the use of credit restructuring and other credit relief mechanisms authorized under the Agricultural Credit Act of 1987 [Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568, see Tables for classification] and related provisions of law for such farmers and ranchers; and

"(3) encourage other lenders participating with Farm Credit System institutions in mutual loan agreements to exercise forbearance before declaring loans to such farmers and ranchers in default."

§2253. Repealed. Pub. L. 115–334, title V, §5411(30), Dec. 20, 2018, 132 Stat. 4682

Section, Pub. L. 92–181, title V, §5.18, as added Pub. L. 99–205, title II, §202(b), Dec. 23, 1985, 99 Stat. 1693, related to continued effectiveness of certain delegations made by the Farm Credit Administration through twelve months after Dec. 23, 1985.

A prior section 2253, Pub. L. 92–181, title V, §5.19, Dec. 10, 1971, 85 Stat. 622, related to delegation of duties and powers to financial institutions, prior to repeal, effective thirty days after Dec. 23, 1985, by Pub. L. 99–205, title II, §202(a), Dec. 23, 1985, 99 Stat. 1693.

A prior section 5.18 of Pub. L. 92–181 was renumbered section 5.17 and is classified to section 2252 of this title.

§2254. Examinations

(a) Scope and frequency of examinations; power, authority, and liability of examiners

Each institution of the System shall be examined by Farm Credit Administration examiners at such times as the Board may determine, but in no event less than once during each 18-month period.

Such examinations may include, if appropriate, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and appraisals of the effectiveness of the institution's management and application of policies governing the carrying out of this chapter and regulations of the Farm Credit Administration and servicing all eligible borrowers. Examination of banks shall include an analysis of the compensation paid to the chief executive officer and the salary scales of the employees of the bank. At the direction of the Board, Farm Credit Administration examiners also shall make examinations of the condition of any organization, other than federally regulated financial institutions, to, for, or with which any institution of the System contemplates making a loan or discounting paper. For the purposes of this chapter, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act [12 U.S.C. 21 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], and Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

(b) Annual report of condition

Each institution of the System shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration by regulation may require. Such financial statements of System institutions shall be audited by an independent public accountant.

(c) Report of examination of noncomplying institution; publication; notice of intention

The Farm Credit Administration may publish the report of examination of any System institution that does not, before the end of the 120th day after the date of notification of the recommendations and suggestions of the Farm Credit Administration, based on such examination, comply with such recommendations and suggestions to the satisfaction of the Farm Credit Administration. The Farm Credit Administration shall give notice of intention to publish in the event of such noncompliance at least 90 days before such publication. Such notice of intention may be given any time after such notification of recommendations and suggestions.

(d) Duties of Farm Credit Administration

On receipt of a request made under section 2277a-8(b)(1)(B) of this title with respect to a System institution, the Farm Credit Administration shall—

(1) furnish for the confidential use of the Farm Credit System Insurance Corporation reports of examination of the institution and other reports or information on the institution; and

(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Farm Credit System Insurance Corporation the report of the examination and such other information; or

(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this chapter, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.

(e) Sharing of privileged and confidential information

A System institution shall not be considered to have waived the confidentiality of a privileged communication with an attorney or an accountant if the System institution provides the content of the communication to the Farm Credit Administration pursuant to the supervisory or regulatory authorities of the Farm Credit Administration.

(Pub. L. 92-181, title V, §5.19, formerly §5.20, Dec. 10, 1971, 85 Stat. 623; renumbered §5.19 and amended Pub. L. 99-205, title II, §203(a), Dec. 23, 1985, 99 Stat. 1693; Pub. L. 99-509, title I, §1037, Oct. 21, 1986, 100 Stat. 1878; Pub. L. 100-233, title II, §205(b), title IV, §432(b), Jan. 6, 1988, 101 Stat. 1607, 1661; Pub. L. 100-399, title II, §204, title IV, §416(c), Aug. 17, 1988, 102 Stat. 993, 1004; Pub. L. 101-624, title XVIII, §1843(b), Nov. 28, 1990, 104 Stat. 3836; Pub. L.

102–552, title V, §§512, 513(b), Oct. 28, 1992, 106 Stat. 4133, 4134; Pub. L. 104–105, title II, §213, Feb. 10, 1996, 110 Stat. 175; Pub. L. 115–334, title V, §§5404, 5411(31), Dec. 20, 2018, 132 Stat. 4676, 4682.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.19 of Pub. L. 92–181 was classified to section 2253 of this title prior to repeal by Pub. L. 99–205, title II, §202(a), Dec. 23, 1985, 99 Stat. 1693.

REFERENCES IN TEXT

The National Bank Act, referred to in subsec. (a), is act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

The Federal Reserve Act, referred to in subsec. (a), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified principally to chapter 3 (§221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (a), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–334, §5411(31)(A), substituted "Each institution" for "Except for Federal land bank associations, each institution" and struck out "Each Federal land bank association shall be examined by Farm Credit Administration examiners at such times as the Farm Credit Administration Board may determine, except that each such association shall be examined at least once every three years." after "each 18-month period."

Subsec. (b). Pub. L. 115–334, §5411(31)(B), struck out par. (1) designation before "Each institution", struck out ", except with respect to any actions taken by any banks of the System under section 2159(b) of this title," after "accounting principles" and "Notwithstanding the provisions of the preceding sentence and any other provision of this chapter, for the period July 1, 1986, through December 31, 1988, the institutions of the Farm Credit System may, on the prior approval of the Farm Credit Administration and subject to such conditions as it may establish, capitalize annually their provision for losses that is in excess of one-half of 1 percent of loans outstanding and amortize such capitalized amounts over a period not to exceed 20 years." after "may require.", and struck out pars. (2) and (3) which read as follows:

"(2) In accordance with the regulations of the Farm Credit Administration, for the period ending December 31, 1992, System institutions are authorized to use the authorities contained in the third sentence of paragraph (1) except as otherwise provided in section 2278a–6 of this title.

"(3) Any preferred stock issued under section 2278b–7 of this title shall be subordinated to, and impaired before, other stock or equities of the institution."

Subsec. (e). Pub. L. 115–334, §5404, added subsec. (e).

1996—Subsec. (a). Pub. L. 104–105 substituted "during each 18-month period" for "each year" in first sentence.

1992—Subsec. (a). Pub. L. 102–552, §512, substituted "may include, if appropriate" for "shall include" in third sentence.

Subsec. (d). Pub. L. 102–552, §513(b), added subsec. (d).

1990—Subsec. (a). Pub. L. 101–624 inserted after third sentence "Examination of banks shall include an analysis of the compensation paid to the chief executive officer and the salary scales of the employees of the bank."

1988—Subsec. (a). Pub. L. 100–399, §416(c), substituted "at least once every three years" for "at least once every 5 years".

Pub. L. 100–233, §432(b), substituted "Except for Federal land bank associations, each" for "Each", substituted "the Board" for "the Chairman of the Board" in two places, and inserted after first sentence "Each Federal land bank association shall be examined by Farm Credit Administration examiners at such times as the Farm Credit Administration Board may determine, except that each such association shall be examined at least once every 5 years."

Subsec. (b). Pub. L. 100–233, §205(b), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (b)(2). Pub. L. 100-399, §204, substituted "the third sentence of paragraph (1)" for "this section".

1986—Subsec. (b). Pub. L. 99-509 substituted second and third sentences for former second sentence which read as follows: "Each such report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration by regulation may require."

1985—Pub. L. 99-205 in amending section generally, revised and restated existing provisions in subsec. (a) and added subsecs. (b) and (c). Prior to amendment, section read as follows: "Except as provided herein, each institution of the System, and each of their agents, at such times as the Governor of the Farm Credit Administration may determine, shall be examined and audited by farm credit examiners under the direction of an independent chief Farm Credit Administration examiner, but each bank and each production credit association shall be examined and audited not less frequently than once each year. Such examinations shall include objective appraisals of the effectiveness of management and application of policies in carrying out the provisions of this chapter and in servicing all eligible borrowers. If the Governor determines it to be necessary or appropriate, the required examinations and audits may be made by independent certified public accountants, certified by a regulatory authority of a State, and in accordance with generally accepted auditing standards. Upon request of the Governor or any bank of the System, farm credit examiners shall also make examinations and written reports of the condition of any organization, other than national banks, to which, or with which, any institution of the System contemplates making a loan or discounting paper of such organization. For the purposes of this chapter, examiners of the Farm Credit Administration shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act [12 U.S.C. 21 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law."

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.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-205 effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as a note under section 2001 of this title.

RESTRAINT BY FEDERAL BANK REGULATORY AGENCIES IN OVERSEEING AGRICULTURAL BORROWERS

Pub. L. 99-198, title XIII, §1326, Dec. 23, 1985, 99 Stat. 1540, provided that:

"(a) Congress finds and declares that—

"(1) high production costs and low commodity prices have combined to reduce farm income to the lowest levels since the depths of the Depression in the 1930's, to subject many agricultural producers, through no fault of their own, to severe economic hardship, and in many cases temporarily but seriously to impair producers' ability to meet loan repayment schedules in a timely fashion; and

"(2) a policy of adverse classification of agricultural loans by bank examiners under these circumstances will trigger a wave of foreclosures and similar actions on the part of banks, thereby depressing land values and prices for agricultural facilities and equipment and having a devastating effect on farmers and the banking industry, and upon rural areas of the United States in general.

"(b) It is therefore the sense of Congress that the Federal bank regulatory agencies should ensure, in their examination procedures, that examiners exercise caution and restraint and give due consideration not only to the current cash flow of agricultural borrowers under financial stress, but to factors such as their loan collateral and ultimate ability to repay as well, for so long as the adverse economic effects of the cost-price squeeze of recent years continue to impair the ability of these borrowers to meet scheduled repayments on their loans."

§2255. Conditions of other banks and lending institutions

The Comptroller of the Currency is authorized and directed, upon request of the Farm Credit

Administration to furnish for confidential use of an institution of the System such reports, records, and other information as he may have available relating to the financial condition of national banks through, for, or with which such institution of the System has made or contemplates making discounts or loans and to make such further examination, as may be agreed, of organizations through, for, or with which such institution of the Farm Credit System has made or contemplates making discounts or loans.

(Pub. L. 92-181, title V, §5.20, formerly §5.21, Dec. 10, 1971, 85 Stat. 623; renumbered §5.20, Pub. L. 99-205, title II, §203(b), Dec. 23, 1985, 99 Stat. 1694.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.20 of Pub. L. 92-181 was renumbered section 5.19 and is classified to section 2254 of this title.

§2256. Consent to the availability of reports and to examinations

Any organization other than State banks, trust companies, and savings associations shall, as a condition precedent to securing discount privileges with a bank of the Farm Credit System, file with such bank its written consent to examination by farm credit examiners as may be directed by the Farm Credit Administration; and State banks, trust companies, and savings associations may be required in like manner to file a written consent that reports of their examination by constituted State authorities may be furnished by such authorities upon the request of the Farm Credit Administration.

(Pub. L. 92-181, title V, §5.21, formerly §5.22, Dec. 10, 1971, 85 Stat. 623; renumbered §5.21, Pub. L. 99-205, title II, §203(b), Dec. 23, 1985, 99 Stat. 1694.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.21 of Pub. L. 92-181 was renumbered section 5.20 and is classified to section 2255 of this title.

§2257. Reports on conditions of institutions receiving loans or deposits

The executive departments, boards, commissions, and independent establishments of the Government of the United States, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Reserve banks are severally authorized under such conditions as they may prescribe, upon request of the Farm Credit Administration, to make available to it or to any institution of the System in confidence all reports, records, or other information relating to the condition of any organization to which such institution of the System has made or contemplates making loan or for which it has or contemplates discounting paper, or which it is using or contemplates using as a custodian of securities or other credit instruments, or a depository. The Federal Reserve banks in their capacity as depositories, agents, and custodians for bonds, debentures, and other obligations issued by the banks of the System or book entries thereof are also authorized and directed, upon request of the Farm Credit Administration, to make available for audit by farm credit examiners all appropriate books, accounts, financial records, files, and other papers.

(Pub. L. 92-181, title V, §5.22, formerly §5.23, Dec. 10, 1971, 85 Stat. 624; renumbered §5.22, Pub. L. 99-205, title II, §203(b), Dec. 23, 1985, 99 Stat. 1694.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.22 of Pub. L. 92–181 was renumbered section 5.21 and is classified to section 2256 of this title.

§2257a. Uniform financial reporting instructions

(a) In general

Each System institution shall comply with uniform financial reporting instructions required by the Farm Credit Administration, to standardize and facilitate the reporting of System data.

(b) Computerized system

If the financial reports are maintained by a computer system, each System institution may develop an internal computer system or it may contract out to a vendor under open competitive bidding any or all aspects of the computerized system.

(c) Submission of proposal

Within 6 months of January 6, 1988, each System institution shall submit to the Farm Credit Administration a report on the plan of that institution to bring the operations of the institution into compliance with the uniform financial reporting instructions required by the Farm Credit Administration.

(Pub. L. 92–181, title V, §5.22A, as added Pub. L. 100–233, title IV, §429, Jan. 6, 1988, 101 Stat. 1658.)

§2258. Jurisdiction

Each institution of the System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located.

(Pub. L. 92–181, title V, §5.23, formerly §5.24, Dec. 10, 1971, 85 Stat. 624; Pub. L. 94–184, §1(b), Dec. 31, 1975, 89 Stat. 1060; renumbered §5.23, Pub. L. 99–205, title II, §203(b), Dec. 23, 1985, 99 Stat. 1694.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.23 of Pub. L. 92–181 was renumbered section 5.22 and is classified to section 2257 of this title.

AMENDMENTS

1975—Pub. L. 94–184 struck out provisions prohibiting district court jurisdiction on the basis of incorporation under this Act or prior Federal law, and prohibiting jurisdiction except in cases by or against the United States or one of its officers, or against a person over whom State courts have no jurisdiction and except in cases by or against a receiver or conservator appointed under this chapter.

§2259. State legislation

Whenever it is determined by the Farm Credit Administration, or by judicial decision, that a State law is applicable to the obligations and securities authorized to be held by the institutions of the System under this chapter, which law would provide insufficient protection or inadequate safeguards against loss in the event of default, the Farm Credit Administration may declare such obligations or securities to be ineligible as collateral for the issuance of new notes, bonds, debentures, and other obligations under this chapter.

(Pub. L. 92–181, title V, §5.24, formerly §5.25, Dec. 10, 1971, 85 Stat. 624; renumbered §5.24, Pub.

L. 99–205, title II, §203(b), Dec. 23, 1985, 99 Stat. 1694.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.24 of Pub. L. 92–181 was renumbered section 5.23 and is classified to section 2258 of this title.

§2260. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 92–181, title V, §5.30, as added Pub. L. 96–592, title V, §509, Dec. 24, 1980, 94 Stat. 3450, which related to audit and report to Congress by the Comptroller General, was renumbered section 5.44 of Pub. L. 92–181 by Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703, transferred to section 2275 of this title, and repealed by Pub. L. 115–334, title V, §5411(36), Dec. 20, 2018, 132 Stat. 4683.

PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

§2261. Cease and desist proceedings

(a) If, in the opinion of the Farm Credit Administration, any institution in the Farm Credit System, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such an institution is engaging or has engaged, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Farm Credit Administration in connection with the granting of any application or other request by the institution or any written agreement entered into with the Farm Credit Administration, the Farm Credit Administration may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Farm Credit Administration at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the Farm Credit Administration shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Farm Credit Administration may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order

may, by provisions that may be mandatory or otherwise, require the institution or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(b) A cease and desist order shall become effective at the expiration of thirty days after the service of such order upon the institution or other person concerned (except in the case of a cease and desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein except to such extent as it is stayed, modified, terminated, or set aside by action of the Farm Credit Administration or a reviewing court.

(Pub. L. 92-181, title V, §5.25, as added Pub. L. 99-205, title II, §204, Dec. 23, 1985, 99 Stat. 1694.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.25 of Pub. L. 92-181 was renumbered section 5.24 and is classified to section 2259 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2262. Temporary cease and desist orders

(a) Whenever the Farm Credit Administration shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution under section 2261 of this title, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the investors in Farm Credit System obligations or shareholders in the institution prior to the completion of the proceedings conducted under section 2261 of this title, the Farm Credit Administration may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person to cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the institution or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (b), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the institution or such director, officer, employee, agent, or other person, until effective date of such order.

(b) Within ten days after the institution concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution has been served with a temporary cease and desist order, the institution or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges

served upon the institution or such director, officer, employee, agent, or other person under section 2261 of this title, and such court shall have jurisdiction to issue such injunction.

(Pub. L. 92–181, title V, §5.26, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1695.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.26 of Pub. L. 92–181 was renumbered section 5.40 and is set out in part as notes under section 2001 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2263. Enforcement of temporary cease and desist orders

In the case of violation or threatened violation of, or failure to obey, a temporary cease and desist order issued under section 2262 of this title, the Farm Credit Administration may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(Pub. L. 92–181, title V, §5.27, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1696.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.27 of Pub. L. 92–181, which amended section 393 of this title and sections 5314 and 5315 of Title 5, Government Organization and Employees, was renumbered section 5.41.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2264. Suspension or removal of director or officer

(a) Written notice of intention to remove; violation of law, rule, regulation, or final cease and desist order; unsafe or unsound practice; breach of fiduciary duty

Whenever, in the opinion of the Farm Credit Administration, any director or officer of any institution in the Farm Credit System has committed any violation of law, rule, or regulation or of a cease and desist order that has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of a fiduciary duty as such director or officer, and the Farm Credit Administration determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its shareholders or investors in Farm Credit

System obligations could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or one that demonstrates a willful or continuing disregard for the safety or soundness of the System institution, the Farm Credit Administration may serve upon such director or officer a written notice of its intention to remove him from office.

(b) Written notice of intention to remove or suspend director, officer or other person; personal dishonesty; willful or continuing disregard; unfitness to continue in office or to participate in affairs of institution

Whenever, in the opinion of the Farm Credit Administration, any director or officer of an institution in the Farm Credit System, by conduct or practice with respect to another institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to continue as a director or officer, and whenever, in the opinion of the Farm Credit Administration, any other person participating in the conduct of the affairs of an institution in the Farm Credit System, by the conduct or practice with respect to such institution or other institution in the Farm Credit System or other business institution that resulted in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for its safety and soundness and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such institution, the Farm Credit Administration may serve upon such director, officer, or other person a written notice of its intention to remove that director, officer, or other person from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(c) Suspension from office; prohibition from further participation in conduct of affairs of institution; service of notice

In respect to any director or officer of an institution in the Farm Credit System or any other person referred to in subsection (a) or (b) of this section, the Farm Credit Administration may, if it deems it necessary for the protection of the institution or the interests of its shareholders and the investors in the Farm Credit System obligations, by written notice to such effect served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (e) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) or (b) and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(d) Statement of grounds for removal or prohibition; notice and hearing; order of suspension, removal or prohibition; service of order

A notice of intention to remove a director, officer, or other person from office or to prohibit such director's, officer's, or other person's participation in the conduct of the affairs of an institution in the Farm Credit System, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Farm Credit Administration at the request of (1) such director or officer or other person, and for good cause shown, or (2) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, such director, officer, or other person shall be deemed to have consented

to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Farm Credit Administration shall find that any of the grounds specified in such notice have been established, the Farm Credit Administration may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. A copy of an order issued under this subsection shall be served upon the institution concerned. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(e) Stay of suspension or prohibition

Within ten days after any director, officer, or other person has been suspended from office or prohibited from participation in the conduct of the affairs of a System institution under subsection (c) of this section, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the institution is located, or the United States district court for the District of Columbia, for a stay of either such suspension or prohibition, or both, pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subsection (a) or (b), and such court shall have jurisdiction to stay either such suspension or prohibition, or both.

(Pub. L. 92-181, title V, §5.28, as added Pub. L. 99-205, title II, §204, Dec. 23, 1985, 99 Stat. 1696; amended Pub. L. 100-233, title VIII, §805(aa), Jan. 6, 1988, 101 Stat. 1717; Pub. L. 100-399, title VII, §702(d), Aug. 17, 1988, 102 Stat. 1006.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.28 of Pub. L. 92-181 was renumbered section 5.42 and is set out as a note under section 2001 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-233, §805(aa)(1), designated provisions preceding subsec. (b) as subsec. (a).

Subsec. (e). Pub. L. 100-399 substituted "subsection (c)" for "subsection (d)".

Pub. L. 100-233, §805(aa)(2), substituted "subsection (d) of this section" for "subsection (d)(3) of this section".

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.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2265. Suspension or removal of director or officer charged with felony

(a) Whenever any director or officer of an institution in the Farm Credit System, or other person participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment

for a term exceeding one year under State or Federal law, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interests of the institution's shareholders or investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System, by written notice served upon such director, officer, or other person, suspend such director, officer, or other person from office or prohibit such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Farm Credit Administration. In the event that a judgment of conviction with respect to such crime is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Farm Credit Administration may, if continued service or participation by the individual may pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System, issue and serve upon such director, officer, or other person an order removing such director, officer, or other person from office or prohibiting such director, officer, or other person from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Farm Credit Administration. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Farm Credit Administration from thereafter instituting proceedings to remove such director, officer, or other person from office or to prohibit further participation in Farm Credit System affairs under section 2264 of this title. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under subsection (b) unless terminated by the Farm Credit Administration.

(b) Within thirty days from service of any notice of suspension or order of removal issued under subsection (a), the director, officer, or other person concerned may request in writing an opportunity to appear before the Farm Credit Administration to show that the continued service to or participation in the conduct of the affairs of the institution by such individual does not, or is not likely to, pose a threat to the interest of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System. Upon receipt of any such request, the Farm Credit Administration shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of the concerned director, officer, or other person) and place at which the director, officer, or other person may appear, personally or through counsel, before the Chairman of the Farm Credit Administration or designated employees of the Farm Credit Administration to submit written materials (or, at the discretion of the Farm Credit Administration, oral testimony) and oral argument. Within sixty days of such hearing, the Farm Credit Administration shall notify the director, officer, or other person whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the institution will be continued, terminated, or otherwise modified, or whether the order removing such director, officer, or other person from office or prohibiting such individual from further participation in any manner in the conduct of the affairs of the institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Farm Credit Administration's decision, if adverse to the director, officer, or other person. The Farm Credit Administration may prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(Pub. L. 92-181, title V, §5.29, as added Pub. L. 99-205, title II, §204, Dec. 23, 1985, 99 Stat. 1698; amended Pub. L. 100-233, title VIII, §805(bb), Jan. 6, 1988, 101 Stat. 1717; Pub. L. 100-399, title VII, §702(e), Aug. 17, 1988, 102 Stat. 1006.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.29 of Pub. L. 92-181 was renumbered section 5.43 and is set out as a note under section

2001 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233, §805(bb)(1), substituted "may pose a threat to the interests of the institution's shareholders or investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System" for "may pose a threat to the interest of the institution's shareholders or the investors in the Farm Credit System obligations or may threaten to impair public confidence in the institution or Farm Credit System".

Subsec. (b). Pub. L. 100–233 struck out "may" before "threaten to impair public confidence".

Pub. L. 100–233, §805(bb)(2), substituted "of the institution's shareholders or the investors in Farm Credit System obligations or may threaten to impair public confidence in the institution or the Farm Credit System" for "in Farm Credit System obligations".

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.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2265a. Removal and prohibition authority; industry-wide prohibition

(a) Definition of person

In this section, the term "person" means—

- (1) an individual; and
- (2) in the case of a specific determination by the Farm Credit Administration, a legal entity.

(b) Industry-wide prohibition

Except as provided in subsection (c), any person who, pursuant to an order issued under section 2264 or 2265 of this title, has been removed or suspended from office at a System institution or prohibited from participating in the conduct of the affairs of a System institution shall not, during the period of effectiveness of the order, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

- (1) any insured depository institution subject to section 1818(e)(7)(A)(i) of this title;
- (2) any institution subject to section 1818(e)(7)(A)(ii) of this title;
- (3) any insured credit union under the Federal Credit Union Act (12 U.S.C. 1751 et seq.);
- (4) any Federal home loan bank;
- (5) any institution chartered under this chapter;
- (6) any appropriate Federal financial institutions regulatory agency (as defined in section 1818(e)(7)(D) of this title);
- (7) the Federal Housing Finance Agency; or
- (8) the Farm Credit Administration.

(c) Exception for institution-affiliated party that receives written consent

(1) In general

(A) Affiliated parties

If, on or after the date on which an order described in subsection (b) is issued that removes or suspends an institution-affiliated party from office at a System institution or prohibits an

institution-affiliated party from participating in the conduct of the affairs of a System institution, that party receives written consent described in subparagraph (B), subsection (b) shall not apply to that party—

- (i) to the extent provided in the written consent received; and
- (ii) with respect to the institution described in each written consent.

(B) Written consent described

The written consent referred to in subparagraph (A) is written consent received from—

- (i) the Farm Credit Administration; and
- (ii) each appropriate Federal financial institutions regulatory agency (as defined in section 1818(e)(7)(D) of this title) of the applicable institution described in any of paragraphs (1), (2), (3), or (4) of subsection (b) with respect to which the party proposes to become ¹ an affiliated party.

(2) Disclosure

Any agency described in clause (i) or (ii) of paragraph (1)(B) that provides a written consent under that paragraph shall—

- (A) report the action to the Farm Credit Administration; and
- (B) publicly disclose the action.

(3) Consultation between agencies

The agencies described in clauses (i) and (ii) of paragraph (1)(B) shall consult with each other before providing any written consent under that paragraph.

(d) Violations

A violation of subsection (b) by any person who is subject to an order described in that subsection shall be treated as violation ² of that order.

(Pub. L. 92–181, title V, §5.29A, as added Pub. L. 115–334, title V, §5406, Dec. 20, 2018, 132 Stat. 4676.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

¹ *So in original.*

² *So in original. Probably should be preceded by "a".*

§2266. Hearings and judicial review

(a) Venue; closed hearings; decisions and findings of fact; orders; modification or other action by Farm Credit Administration; judicial review

Any hearing provided for in this part (other than the hearing provided for in section 2265 of this title) shall be held in the Federal judicial district or in the territory in which the home office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. Such hearing shall be private, unless the Farm Credit Administration, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Farm Credit Administration has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall

include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this part. Judicial review of any such order shall be exclusively as provided in this section. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subsection (b), and thereafter until the record in the proceeding has been filed as so provided, the Farm Credit Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Farm Credit Administration may modify, terminate, or set aside any such order with permission of the court.

(b) Judicial review; commencement of proceedings; filing of petition and record; exclusive jurisdiction; finality of judgment and decree

Any party to the proceeding, or any person required by an order issued under this part to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served under subsection (a) (other than an order issued with the consent of the System institution or the director or officer or other person concerned, or an order issued under section 2265 of this title) by the filing in the court of appeals of the United States for the circuit in which the home office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Farm Credit Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Farm Credit Administration, and thereupon the Farm Credit Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of subsection (a) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Farm Credit Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(c) Proceedings operating as stays of orders

The commencement of proceedings for judicial review under subsection (b) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Farm Credit Administration.

(Pub. L. 92–181, title V, §5.30, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1699; amended Pub. L. 100–233, title VIII, §805(cc), Jan. 6, 1988, 101 Stat. 1717.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5.30 of Pub. L. 92–181 was renumbered section 5.44 and transferred from section 2260 to section 2275 of this title, prior to repeal by Pub. L. 115–334, title V, §5411(36), Dec. 20, 2018, 132 Stat. 4683.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–233 substituted "this section" for "this subsection (g)".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2267. Jurisdiction and enforcement

The Farm Credit Administration may in its discretion apply to the United States district court, or

the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for the enforcement of any effective and outstanding notice or order issued under this part, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this part no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this part, or to review, modify, suspend, terminate, or set aside any such notice or order. For purposes of this section, any directive issued under section 2154(b)(2), 2154a(e), or 2202a(h) of this title shall be treated as an effective and outstanding order issued under section 2261 of this title that has become final.

(Pub. L. 92–181, title V, §5.31, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1700; amended Pub. L. 100–233, title VIII, §804(a)(1), Jan. 6, 1988, 101 Stat. 1714; Pub. L. 115–334, title V, §5411(32), Dec. 20, 2018, 132 Stat. 4683.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 substituted "2202a(h)" for "2202a(i)".

1988—Pub. L. 100–233 inserted at end "For purposes of this section, any directive issued under section 2154(b)(2), 2154a(e), or 2202a(i) of this title shall be treated as an effective and outstanding order issued under section 2261 of this title that has become final."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2267a. Jurisdiction over institution-affiliated parties

(a) In general

For purposes of sections 2261, 2262, and 2268 of this title, the jurisdiction of the Farm Credit Administration over parties, and the authority of the Farm Credit Administration to initiate actions, shall include enforcement authority over institution-affiliated parties.

(b) Effect of separation on jurisdiction and authority

Subject to subsection (c), the resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the merger, consolidation, conservatorship, or receivership of a Farm Credit System institution) shall not affect the jurisdiction and authority of the Farm Credit Administration to issue any notice or order and proceed under this part against that party.

(c) Limitation

To proceed against a party under subsection (b), the notice or order described in that subsection shall be served not later than 6 years after the date on which the party ceased to be an institution-affiliated party with respect to the applicable Farm Credit System institution.

(d) Applicability

The date on which a party ceases to be an institution-affiliated party described in subsection (c) may occur before, on, or after December 20, 2018.

(Pub. L. 92–181, title V, §5.31A, as added Pub. L. 115–334, title V, §5407, Dec. 20, 2018, 132 Stat. 4677.)

§2268. Penalty

(a) Forfeiture and payment; compromise, modification, or remitting by Farm Credit Administration; assessment and collection by written notice

Any institution in the System that violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the terms of any order that has become final and was issued under section 2261 or 2262 of this title, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues. Any such institution or person who violates any provision of this chapter or any regulation issued under this chapter shall forfeit and pay a civil penalty of not more than \$500 per day for each day during which such violation continues. Notwithstanding the preceding sentences, the Farm Credit Administration may, in its discretion, compromise, modify, or remit any civil money penalty that is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the Farm Credit Administration by written notice.

(b) Factors determining amount

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the Farm Credit Administration shall notify the institution or person to be assessed of the violation or violations alleged to have occurred or to be occurring, and shall solicit the views of the institution or person regarding the imposition of such penalty. In determining the amount of the penalty, the Farm Credit Administration shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the System institution or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Notice and hearing; final orders

The System institution or person assessed shall be afforded an opportunity for a hearing by the Farm Credit Administration, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The Farm Credit Administration determination shall be made by final order which may be reviewed only as provided in subsection (d). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(d) Judicial review

Any System institution or person against whom an order imposing a civil money penalty has been entered after a Farm Credit Administration hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the System institution is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days after the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Farm Credit Administration. The Farm Credit Administration shall promptly certify and file in such Court the record upon which the penalty was imposed, as provided in section 2112 of title 28. Final orders of the Farm Credit Administration issued under subsection (c) shall be reviewable under chapter 7 of title 5.

(e) Action by Attorney General to recover amount assessed

If any System institution or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the Farm Credit Administration, the Farm Credit Administration shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(f) Rules and regulations

The Farm Credit Administration shall promulgate regulations establishing procedures necessary to implement section 2267 of this title and this section.

(g) Payment into Treasury

All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(h) Directives as final orders

For purposes of this section, any directive issued under section 2154(b)(2), 2154a(e), or 2202a(h) of this title shall be treated as an order that has become final and was issued under section 2261 of this title.

(Pub. L. 92–181, title V, §5.32, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1700; amended Pub. L. 100–233, title IV, §423, title VIII, §§804(a)(2), 805(dd), Jan. 6, 1988, 101 Stat. 1656, 1714, 1717; Pub. L. 115–334, title V, §5411(33), Dec. 20, 2018, 132 Stat. 4683.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (h). Pub. L. 115–334 substituted "2202a(h)" for "2202a(i)".

1988—Subsec. (a). Pub. L. 100–233, §423(a), substituted "continues. Any such institution or person who violates any provision of this chapter or any regulation issued under this chapter shall forfeit and pay a civil penalty of not more than \$500 per day for each day during which such violation continues. Notwithstanding the preceding sentences," for "continues, but".

Subsec. (b). Pub. L. 100–233, §423(b), inserted "Before determining whether to assess a civil money penalty and determining the amount of such penalty, the Farm Credit Administration shall notify the institution or person to be assessed of the violation or violations alleged to have occurred or to be occurring, and shall solicit the views of the institution or person regarding the imposition of such penalty."

Subsec. (d). Pub. L. 100–233, §423(c), substituted "Final orders of the Farm Credit Administration issued under subsection (c) shall be reviewable under chapter 7 of title 5" for "The findings of the Farm Credit Administration shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5".

Subsec. (f). Pub. L. 100–233, §805(dd), substituted "section 2267 of this title and this section" for "sections 2267 and 2268 of this title".

Subsec. (h). Pub. L. 100–233, §804(a)(2), added subsec. (h).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2269. Further penalties

Any director or officer, or former director or officer of a System institution, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under section 2264 or 2265 of this title, and who (1) participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such institution, or (2) without the prior written approval of the Farm Credit Administration, votes for a director, serves or acts as a director, officer, or employee of any System institution, shall upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both.

(Pub. L. 92–181, title V, §5.33, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1701.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2270. Replacement of suspended or removed directors

If at any time, because of the suspension or removal of one or more directors pursuant to section 2264 or 2265 of this title, there shall be on the board of directors of a System institution less than a quorum of directors not so suspended, the Chairman shall appoint persons to serve temporarily as directors in their place and stead so as to establish a quorum until such time as those who have been removed are reinstated or their respective successors are duly elected and take office.

(Pub. L. 92-181, title V, §5.34, as added Pub. L. 99-205, title II, §204, Dec. 23, 1985, 99 Stat. 1701.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99-205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2271. Definitions

As used in this part—

(1) the terms "cease and desist order that has become final" and "order which has become final" mean a cease and desist order, or an order, issued by the Farm Credit Administration with the consent of the System institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Farm Credit Administration has been filed and perfected in a court of appeals as specified in section 2266(b) of this title, or with respect to which the action of the court in which such petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in section 2266(b) of this title, or an order issued under section 2265 of this title;

(2) the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation;

(3) the terms "institution in the System", "System institution", and "institution" mean all institutions enumerated in section 2002 of this title, any service organization chartered under part E of subchapter IV of this chapter, and the Financial Assistance Corporation;

(4) the term "institution-affiliated party" means—

(A) a director, officer, employee, shareholder, or agent of a System institution;

(B) an independent contractor (including an attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(i) a violation of law (including regulations) that is associated with the operations and activities of 1 or more System institutions;

(ii) a breach of fiduciary duty; or

(iii) an unsafe practice that causes or is likely to cause more than a minimum financial loss to, or a significant adverse effect on, a System institution; and

(C) any other person, as determined by the Farm Credit Administration (by regulation or on a case-by-case basis) who participates in the conduct of the affairs of a System institution; and

(5) the term "unsafe or unsound practice" shall—

(A) have the meaning given to it by the Farm Credit Administration by regulation, rule, or

order; and

(B) mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Insurance Corporation under section 2277a–10 of this title.

(Pub. L. 92–181, title V, §5.35, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1701; amended Pub. L. 100–233, title II, §§203, 207(d), Jan. 6, 1988, 101 Stat. 1605, 1608; Pub. L. 102–237, title V, §502(i), Dec. 13, 1991, 105 Stat. 1869; Pub. L. 102–552, title II, §202(b), Oct. 28, 1992, 106 Stat. 4106; Pub. L. 115–334, title V, §§5408, 5411(34), Dec. 20, 2018, 132 Stat. 4678, 4683.)

EDITORIAL NOTES

AMENDMENTS

2018—Pars. (4), (5). Pub. L. 115–334, §5408, added par. (4) and redesignated former par. (4) as (5).

Par. (5)(B), (C). Pub. L. 115–334, §5411(34), redesignated subpar. (C) as (B), struck out "after December 31, 1992," before "mean any" and "by the Farm Credit System Assistance Board under section 2278a–6 of this title or" before "by the Farm Credit System Insurance Corporation", and struck out former subpar. (B) which read as follows: "during the period beginning on January 6, 1988, and ending December 31, 1992, mean any noncompliance by a System institution, as determined by the Farm Credit Administration in consultation with the Assistance Board, with any term or condition imposed on the institution by the Assistance Board under section 2278a–6 of this title; and".

1992—Par. (4)(C). Pub. L. 102–552 added subpar. (C).

1991—Par. (3). Pub. L. 102–237 substituted "part E" for "part D".

1988—Par. (3). Pub. L. 100–233, §207(d), substituted "Financial Assistance Corporation" for "Capital Corporation".

Par. (4). Pub. L. 100–233, §203, amended par. (4) generally. Prior to amendment, par. (4) read as follows: "the term 'unsafe or unsound practice' shall have the meaning given to it by the Farm Credit Administration by regulations, rule, or order."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–237 effective as if included in the provision of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, to which the amendment relates, see section 1101(b)(4) of Pub. L. 102–237, set out as a note under section 1421 of Title 7, Agriculture.

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2272. Notice of service

Any service required or authorized to be made by the Farm Credit Administration under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Farm Credit Administration may by regulation or otherwise provide. Any such service by mail is complete upon mailing. Copies of any notice or order served by the Farm Credit Administration on any association or any director or officer thereof or other person participating in the conduct of its affairs, under the provisions of this part, shall also be sent to the supervisory bank. (Pub. L. 92–181, title V, §5.36, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1702.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2273. Ancillary provisions; subpoena power; etc.

In the course of or in connection with any proceeding under this part or any examination or investigation under this chapter, the Farm Credit Administration or any designated representative thereof, including any person designated to conduct any hearing under this part, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Farm Credit Administration is empowered to make rules and regulations with respect to any such proceedings, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. The Farm Credit Administration or any party to proceedings under this part may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this part, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this part by a System institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the System institution or from its assets. Any person who willfully shall fail or refuse to attend or testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Farm Credit Administration, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both.

(Pub. L. 92–181, title V, §5.37, as added Pub. L. 99–205, title II, §204, Dec. 23, 1985, 99 Stat. 1702; amended Pub. L. 100–233, title VIII, §805(ee), Jan. 6, 1988, 101 Stat. 1717.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–233 substituted "proceedings, examinations, or investigations" for "proceedings, claims, examinations, or investigations".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective thirty days after Dec. 23, 1985, see section 401 of Pub. L. 99–205, set out as an Effective Date of 1985 Amendment note under section 2001 of this title.

§2274. Power to remove directors and officers

Notwithstanding any other provision of this chapter, a Farm Credit Bank board, officer, or employee shall not remove any director or officer of any association.

(Pub. L. 92–181, title V, §5.38, as added Pub. L. 100–233, title IV, §432(c), Jan. 6, 1988, 101 Stat. 1661; amended Pub. L. 115–334, title V, §5411(35), Dec. 20, 2018, 132 Stat. 4683.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 substituted "a Farm Credit Bank board, officer, or employee shall not remove any director or officer of any" for "a farm credit district board, bank board, or bank officer or employee shall not remove any director or officer of any production credit association or Federal land bank".

PART D—MISCELLANEOUS

§2275. Repealed. Pub. L. 115–334, title V, §5411(36), Dec. 20, 2018, 132 Stat. 4683

Section, Pub. L. 92–181, title V, §5.44, formerly §5.30, as added Pub. L. 96–592, title V, §509, Dec. 24, 1980, 94 Stat. 3450; renumbered §5.44, Pub. L. 99–205, title II, §205(a)(2), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814, related to Government Accountability Office audit, report to Congress, and access and examination of recorded information by the Comptroller General. See section 2276 of this title.

EDITORIAL NOTES

CODIFICATION

Section was formerly classified to section 2260 of this title.

§2275a. Transition rules relating to amendment of certain FCA approval authorities

(a) In general

Any approvals granted by the Farm Credit Administration before January 6, 1988, shall remain in effect on and after such date.

(b) Authority to issue regulations

(1) In general

Any approval authority of the Farm Credit Administration that, under the amendments made by section 802 of the Agricultural Credit Act of 1987, became an authority to issue regulations may be exercised only until the earlier of the date the Farm Credit Administration issues final regulations under such authority, or 1 year after January 6, 1988.

(2) Enforcement actions

At the close of the 1-year period referred to in paragraph (1), the Farm Credit Administration shall not take any enforcement action against any System institution with respect to any provision so amended, until the Farm Credit Administration issues final regulations under such provision.

(c) Effect of section

This section shall not affect the authority of the Farm Credit Administration to exercise any other approval authority either on a case-by-case basis or through regulation, as provided in section 2252(a)(5) of this title.

(Pub. L. 92–181, title V, §5.45, as added Pub. L. 100–233, title VIII, §802(w), Jan. 6, 1988, 101 Stat. 1713.)

EDITORIAL NOTES

REFERENCES IN TEXT

The amendments made by section 802 of the Agricultural Credit Act of 1987, referred to in subsec. (b)(1), are the amendments made by section 802 of Pub. L. 100–233, title VIII, Jan. 6, 1988, 101 Stat. 1710, which enacted section 2275a of this title and amended sections 2011 to 2013, 2017, 2031, 2051, 2052, 2071 to 2073, 2077, 2091, 2121, 2122, 2124, 2126, 2130, 2132, 2212, 2213, 2223, and 2252 of this title. For complete classification of section 802 to the Code, see Tables.

§2276. Access to and examination by Comptroller General of books, documents, etc., of farm credit system banks and institutions

On and after December 19, 1985, the Comptroller General or his duly authorized representatives 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 paragraph (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 account ¹ of each insured system ² 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 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)(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 insured 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 nonaccrual 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.

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

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

§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-guaranteed 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 system ¹ 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 Administration 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.

"(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.

¹ So in original. Probably should be capitalized.

§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 section 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 System 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 institution, 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 secured 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 before 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 previously 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 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 conservator 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 provides 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 transaction, 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;

(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 subparagraph (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 contract; 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 System 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 nondefaulting 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 Administration 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 subsection ² 2277a–10(d)(2) of this title, any agreement relating to an extension of credit between a 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.

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

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

§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.

Section 2278a-3, Pub. L. 92-181, title VI, §6.3, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1587; amended Pub. L. 100-399, title II, §201(a), (b), Aug. 17, 1988, 102 Stat. 990, established the Assistance Board as a body corporate and set out its powers.

Section 2278a-4, Pub. L. 92-181, title VI, §6.4, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1588; amended Pub. L. 100-399, title II, §201(c), Aug. 17, 1988, 102 Stat. 991, related to certification of eligibility to issue preferred stock.

Section 2278a-5, Pub. L. 92-181, title VI, §6.5, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1588; amended Pub. L. 100-399, title II, §201(d), (e), Aug. 17, 1988, 102 Stat. 991, provided for ways the Board could render assistance to certified institutions.

Section 2278a-6, Pub. L. 92-181, title VI, §6.6, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1589; amended Pub. L. 100-399, title II, §201(f)-(i), Aug. 17, 1988, 102 Stat. 991; Pub. L. 101-624, title XVIII, §1843(a)(2), Nov. 28, 1990, 104 Stat. 3836, related to special powers of the Board.

Section 2278a-7, Pub. L. 92-181, title VI, §6.7, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1591; amended Pub. L. 100-399, title II, §201(j), Aug. 17, 1988, 102 Stat. 991, related to administrative and financial support for the Board.

Section 2278a-8, Pub. L. 92-181, title VI, §6.8, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1591, provided that the Board's powers were limited to the purposes specified in this subchapter.

Section 2278a-9, Pub. L. 92-181, title VI, §6.9, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1591; amended Pub. L. 100-399, title II, §201(k), (l), Aug. 17, 1988, 102 Stat. 991; Pub. L. 102-552, title III, §301, Oct. 28, 1992, 106 Stat. 4107, provided that the Board would succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the Capital Corporation.

Section 2278a-10, Pub. L. 92-181, title VI, §6.10, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1594, related to regulations and audits by and for the Board.

Section 2278a-11, Pub. L. 92-181, title VI, §6.11, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1594, exempted the Board from various taxes.

Section 2278a-12, Pub. L. 92-181, title VI, §6.12, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1594; amended Pub. L. 100-399, title II, §201(m), Aug. 17, 1988, 102 Stat. 991, stated that the Assistance Board and its authority would terminate on Dec. 31, 1992.

Section 2278a-13, Pub. L. 92-181, title VI, §6.13, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1594; amended Pub. L. 100-399, title II, §201(n), Aug. 17, 1988, 102 Stat. 991, set out transitional provisions from the Farm Credit Administration Board to the Assistance Board.

Sections 2278b to 2278b-11 comprised part B of this subchapter "Financial Assistance Corporation".

Section 2278b, Pub. L. 92-181, title VI, §6.20, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1595, established the Farm Credit System Financial Assistance Corporation.

Section 2278b-1, Pub. L. 92-181, title VI, §6.21, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1595; amended Pub. L. 102-552, title III, §307(a), Oct. 28, 1992, 106 Stat. 4116, provided for the purpose of the Financial Assistance Corporation.

Section 2278b-2, Pub. L. 92-181, title VI, §6.22, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1595; amended Pub. L. 100-399, title II, §201(o), Aug. 17, 1988, 102 Stat. 991, provided for a Board of Directors, including its composition and duties.

Section 2278b-3, Pub. L. 92-181, title VI, §6.23, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1595; amended Pub. L. 102-237, title V, §502(m), Dec. 13, 1991, 105 Stat. 1869, required the Corporation to issue generally nontransferable stock with a par value of \$5 to System institutions.

Section 2278b-4, Pub. L. 92-181, title VI, §6.24, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1596; amended Pub. L. 100-399, title II, §201(a), (b), Aug. 17, 1988, 102 Stat. 990, granted the Financial Assistance Corporation certain corporate powers.

Section 2278b-5, Pub. L. 92-181, title VI, §6.25, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1597, established the Farm Credit Assistance Fund and the Financial Assistance Corporation Trust Fund.

Section 2278b-6, Pub. L. 92-181, title VI, §6.26, as added Pub. L. 100-233, title II, §201, Jan. 6, 1988, 101 Stat. 1597; amended Pub. L. 100-399, title II, §201(p)-(x), Aug. 17, 1988, 102 Stat. 991, 992; Pub. L.

102–552, title III, §§302–304(a), 305, 306, Oct. 28, 1992, 106 Stat. 4109–4111, 4114, related to debt obligations issued by the Financial Assistance Corporation.

Section 2278b–7, Pub. L. 92–181, title VI, §6.27, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1602; amended Pub. L. 100–399, title II, §201(y)–(aa), Aug. 17, 1988, 102 Stat. 992, provided for System institution issuance of preferred stock subject to such terms and conditions as authorized by the Assistance Board.

Section 2278b–8, Pub. L. 92–181, title VI, §6.28, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1603; amended Pub. L. 100–399, title II, §201(bb), Aug. 17, 1988, 102 Stat. 992; Pub. L. 102–552, title III, §304(b), Oct. 28, 1992, 106 Stat. 4114, provided for reimbursement to the Financial Assistance Corporation of certain interest charges.

Section 2278b–9, Pub. L. 92–181, title VI, §6.29, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1603; amended Pub. L. 100–460, title VI, §646, Oct. 1, 1988, 102 Stat. 2266, related to one-time stock purchases by System institutions from the Financial Assistance Corporation.

Section 2278b–10, Pub. L. 92–181, title VI, §6.30, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1604, exempted the Financial Assistance Corporation from various taxes.

Section 2278b–11, Pub. L. 92–181, title VI, §6.31, as added Pub. L. 100–233, title II, §201, Jan. 6, 1988, 101 Stat. 1605; amended Pub. L. 102–552, title III, §307(b), Oct. 28, 1992, 106 Stat. 4116, provided for termination of the Financial Assistance Corporation and transfer of remaining funds into the Insurance Fund.

SUBCHAPTER VII—RESTRUCTURING OF SYSTEM INSTITUTIONS

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–399, title IV, §408(a), Aug. 17, 1988, 102 Stat. 1001, substituted "RESTRUCTURING OF" for "MERGERS OF" in subchapter heading.

PART A—MERGER OF BANKS WITHIN A DISTRICT

§2279a. Power to merge

The banks within a district may merge into a single entity (hereinafter in this subchapter referred to as a "merged bank") if the plan of merger is approved by—

- (1) the Farm Credit Administration Board;
- (2) the respective boards of directors of the banks involved;
- (3) a majority of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholders' meeting with each association entitled to cast a number of votes equal to the number of its voting stockholders; and
- (4) in the case of a bank for cooperatives, a majority of the total equity interests in such merging bank for cooperatives (including allocated, but not unallocated, surplus and reserves) held by those stockholders or subscribers to the guaranty fund of the bank voting.

(Pub. L. 92–181, title VII, §7.0, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1645; amended Pub. L. 100–399, title IV, §408(b), Aug. 17, 1988, 102 Stat. 1001.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–399 substituted "The banks" for "Two or more banks" in introductory provisions, and in par. (3) substituted "with each association entitled to cast a number of votes equal to the number of its voting" for "in accordance with the provisions of section 2223(c) of this title relating to the casting of votes

by".

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.

§2279a–1. Board of directors

Each merged bank shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.

(Pub. L. 92–181, title VII, §7.1, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1645; amended Pub. L. 100–399, title IV, §408(c), Aug. 17, 1988, 102 Stat. 1001.)

EDITORIAL NOTES

AMENDMENTS

1988—Pub. L. 100–399 struck out "for the district" in section catchline and amended text generally, revising and restating as a single unlettered paragraph provisions of former subsecs. (a) and (b).

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.

§2279a–2. Powers of merged banks

(a) In general

Except as otherwise provided in this subchapter, a merged bank shall have all of the powers granted to, and shall be subject to all of the obligations imposed on, any of the constituent entities of the merged bank.

(b) Regulations

The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of the banks that form the merged bank are consolidated, and to the extent necessary, reconciled in the merged bank.

(Pub. L. 92–181, title VII, §7.2, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1645.)

§2279a–3. Capitalization

In accordance with section 2154a of this title, each merged bank shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the bank and the manner in which bank stock shall be issued, held, transferred, and retired and bank earnings distributed.

(Pub. L. 92–181, title VII, §7.3, as added Pub. L. 100–399, title IV, §408(d), Aug. 17, 1988, 102

Stat. 1001.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2279a–3, Pub. L. 92–181, title VII, §7.3, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1645, related to issuance of shares of capital stock, prior to repeal by Pub. L. 100–399, title IV, §408(d), Aug. 17, 1988, 102 Stat. 1001.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section 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 an Effective Date of 1988 Amendment note under section 2002 of this title.

§2279a–4. Repealed. Pub. L. 100–399, title IV, §408(d), Aug. 17, 1988, 102 Stat. 1001

Section, Pub. L. 92–181, title VII, §7.4, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1646, related to earnings, reserves, and distributions with regard to merged banks. See section 2279a–3 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective as if repealing provisions had been 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 an Effective Date of 1988 Amendment note under section 2002 of this title.

§2279a–5. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 92–181, title VII, §7.5, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1646, which required reports by merged banks for cooperatives, was renumbered section 3.29 of title III of Pub. L. 92–181 by Pub. L. 100–399, title IV, §408(e), Aug. 17, 1988, 102 Stat. 1001, and was classified to section 2149a of this title, prior to repeal by Pub. L. 115–334, title V, §5411(16), Dec. 20, 2018, 132 Stat. 4680.

PART B—MERGERS, TRANSFERS OF ASSETS, AND POWERS OF ASSOCIATIONS WITHIN A DISTRICT

SUBPART 1—TRANSFERS BY FEDERAL LAND BANKS TO FEDERAL LAND BANK ASSOCIATIONS

§2279b. Transfer of lending authority

(a) Voluntary transfers

A Federal land bank or a merged bank having a Federal land bank as one of its constituents, may transfer to a Federal land bank association, and the association may assume, the authority of the transferring bank in the territorial area served by the association, to make and participate in long-term real estate mortgage loans under this chapter if the transfer is approved by—

- (1) the Farm Credit Administration Board;
- (2) the Board of Directors of both institutions; and
- (3) a majority of the stockholders of the bank and of the association, in accordance with the voting provisions of sections 2279a and 2279c–1 of this title, respectively.

(b) Direct loans and financial assistance

After a transfer described in subsection (a) or (d)—

- (1) the Federal land bank association shall possess all of the direct long-term real estate mortgage loan authority, formerly possessed by the transferring bank, in the territory served by the association; and
- (2) the bank may provide and extend financial assistance to, and discount for, or purchase from, the transferee Federal land bank association any note, draft, or other obligation with the endorsement or guarantee of the association, the proceeds of which have been advanced to persons eligible and for purposes of financing by the association under subsection (a).

(c) Regulations

The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of the banks that make transfers are consolidated and, to the extent necessary, reconciled in the association referred to in subsection (a).

(d) Mandatory transfer

On the merger of one or more production credit associations with one or more Federal land bank associations, the bank supervising the Federal land bank association shall transfer all of the direct lending authority of the bank in the territory served by such Federal land bank association to such merged association.

(Pub. L. 92–181, title VII, §7.6, formerly §§7.6, 7.7, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1647; amended Pub. L. 100–399, title IV, §408(f)–(j), Aug. 17, 1988, 102 Stat. 1001, 1002.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–399, §408(j), transferred section 7.7 of Pub. L. 92–181, which was classified to section 2279c of this title, to subsec. (d) of this section.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–399, §408(f), substituted "Voluntary transfers" for "Assignments" as subsection heading, and in text substituted "may transfer" for "may assign", "this chapter" for "sections 2014 through 2017 of this title", and "transfer is approved" for "assignment is approved" in introductory provisions, and "sections 2279a and 2279c–1 of this title, respectively" for "sections 2279a and 2279b of this title" in par. (3).

Subsec. (b). Pub. L. 100–399, §408(g), substituted "a transfer described in subsection (a) or (d)" for "an assignment described in subsection (a)" in introductory provisions and "the bank may provide" for "the Federal land bank may provide" in par. (2).

Subsec. (c). Pub. L. 100–399, §408(h), struck out "assignments or" before "transfers are consolidated" and struck out second sentence, which provided that, following a transfer or assignment under subsection (a) of this section, the provisions of section 2154a of this title were to be applicable to the association.

Subsec. (d). Pub. L. 100–399, §408(i), (j), transferred section 2279c of this title to subsec. (d) of this

section, substituted heading for former section heading, and amended text generally. Prior to amendment, text read as follows: "On the merger of one or more production credit associations with one or more Federal land bank associations, the bank supervising the Federal land bank association shall transfer all of its direct lending authority of the bank to such association under section 2279c–1 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.

§2279c. Equalization of loan-making powers of certain district associations

(a) Equalization of loan-making powers

(1) In general

(A) Federal land bank associations

Subject to paragraph (2), any association that owns a Federal land bank association authorized as of January 1, 2007, to make long-term loans under subchapter I in its chartered territory within the geographic area described in subsection (b) may make short- and intermediate-term loans and otherwise operate as a production credit association under subchapter II within that same chartered territory.

(B) Production credit associations

Subject to paragraph (2), any association that under its charter has subchapter I lending authority and that owns a production credit association authorized as of January 1, 2007, to make short- and intermediate-term loans under subchapter II in the geographic area described in subsection (b) may make long-term loans and otherwise operate, directly or through a subsidiary association, as a Federal land bank association or Federal land credit association under subchapter I in the geographic area.

(C) Farm Credit Bank

Notwithstanding section 2252(a) of this title, the Farm Credit Bank with which any association had a written financing agreement as of January 1, 2007, may make loans and extend other comparable financial assistance with respect to, and may purchase, any loans made under the new authority provided under subparagraph (A) or (B) by an association exercising such authority.

(2) Required approvals

An association may exercise the additional authority provided for in paragraph (1) only after the exercise of the authority is approved by—

(A) the board of directors of the association; and

(B) a majority of the voting stockholders of the association (or, if the association is a subsidiary of another association, the voting stockholders of the parent association) voting, in person or by proxy, at a duly authorized meeting of stockholders in accordance with the process described in section 2279e of this title.

(b) Applicability

This section applies only to associations the chartered territory of which was within the geographic area served by the Federal intermediate credit bank immediately prior to its merger with a Farm Credit Bank under section 410(e)(1) of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note; Public Law 100–233).

(Pub. L. 92–181, title VII, §7.7, as added Pub. L. 110–234, title V, §5407(a), May 22, 2008, 122

Stat. 1159, and Pub. L. 110–246, §4(a), title V, §5407(a), June 18, 2008, 122 Stat. 1664, 1921.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 2279c, Pub. L. 92–181, title VII, §7.7, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1647; amended Pub. L. 100–399, title IV, §408(i), (j), Aug. 17, 1988, 102 Stat. 1002, related to mergers of unlike associations, prior to renumbering as section 7.6(d) of Pub. L. 92–181 and transfer to section 2279b(d) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Enactment 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, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of Title 7, Agriculture.

Section effective Jan. 1, 2010, see section 5407(d) of Pub. L. 110–246, set out as an Effective Date of 2008 Amendment note under section 2252 of this title.

SUBPART 2—MERGER OF LIKE AND UNLIKE ASSOCIATIONS

§2279c–1. Merger of associations

(a) In general

Two or more associations within the same district, whether or not organized under the same subchapter of this chapter, may merge into a single entity (hereinafter in this subchapter referred to as a "merged association") if the plan of merger is approved by—

- (1) the Farm Credit Administration Board;
- (2) the boards of directors of the associations;
- (3) a majority of the shareholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting; and
- (4) the Farm Credit Bank.

(b) Powers, obligations, and consolidation

(1) Powers and obligations

Except as otherwise provided by this subchapter, a merged association shall—

- (A) possess all powers granted under this chapter to the associations forming the merged association; and
- (B) be subject to all of the obligations imposed under this chapter on the associations forming the merged association.

(2) Consolidation

The Farm Credit Administration shall issue regulations that establish the manner in which the powers and obligations of the associations that form the merged association are consolidated and, to the extent necessary, reconciled in the merged association.

(c) Stock issuance

(1) Plan of merger

Subject to section 2154a of this title, the number of shares of capital stock issued by a merged association to the stockholders of any association forming such merged association, and the rights and privileges of such shares (including voting power, preferences on liquidation, and the right to dividends), shall be determined by the plan of merger adopted by the merged associations.

(2) Capitalization

In accordance with section 2154a of this title, each merged association shall provide, through bylaws and subject to Farm Credit Administration regulations, for the capitalization of the association and the manner in which association stock shall be issued, held, transferred, and retired, and association earnings shall be distributed.

(Pub. L. 92–181, title VII, §7.8, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1647; amended Pub. L. 100–399, title IV, §408(k), (l), Aug. 17, 1988, 102 Stat. 1002.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–399, §408(k), struck out second sentence, which directed that, following a merger under subsection (a) of this section, the provisions of section 2154a of this title were to be applicable to the merged association.

Subsec. (c)(2). Pub. L. 100–399, §408(l), substituted "Capitalization" for "Plan of capitalization" as par. (2) heading and amended text generally. Prior to amendment, text read as follows: "The number of shares of capital stock, and the rights and privileges thereof, issued by a merged association after a merger shall be determined by the Board of Directors of the merged association, with the approval of the supervising bank, and shall be consistent with section 2154a of this title and the regulations issued by the Farm Credit Administration."

Subsec. (c)(3). Pub. L. 100–399, §408(l), struck out par. (3) which read as follows: "Voting stock of a merged association shall be issued to and held by farmers, ranchers, or producers or harvesters of aquatic products who are or were, immediately prior to the merger, direct borrowers from one of the associations forming the merged association or the supervising bank of such merged association."

Subsec. (d). Pub. L. 100–399, §408(l), struck out subsec. (d) which read as follows: "The plan of merger shall provide for the issuance, transfer, and retirement of stock and the distribution of earnings in accordance with the provisions of section 2154a 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.

SUBPART 3—RECONSIDERATION

§2279c–2. Reconsideration

(a) Period

A stockholder vote in favor of—

- (1) the merger of districts under this chapter;
- (2) the merger of banks within a district under section 2279a of this title;
- (3) the transfer of the lending authority of a Federal land bank or a merged bank having a Federal land bank as one of its constituents, under section 2279b of this title;
- (4) the merger of two or more associations under section 2279c–1 or 2279f–1 of this title;
- (5) the termination of the status of an institution as a System institution under section 2279d of

this title; or

(6) the merger of similar banks under section 2279f of this title;

shall not take effect except in accordance with subsection (b).

(b) Reconsideration

(1) Notice

Not later than 30 days after a stockholder vote in favor of any of the actions described in subsection (a), the officer or employee that records such vote shall ensure that all stockholders of the voting entity receive notice of the final results of the vote.

(2) Effective date

A voluntary merger, transfer, or termination that is approved by a vote of the stockholders of two or more banks or associations shall not take effect until the expiration of 30 days after the date on which the stockholders of such banks or associations are notified of the final result of the vote in accordance with paragraph (1).

(3) Petition filed

If a petition for reconsideration of a merger, transfer, or termination vote, signed by at least 15 percent of the stockholders of one or more of the affected banks or associations, is presented to the Farm Credit Administration within 30 days after the date of the notification required under paragraph (1)—

(A) a voluntary merger, transfer, or termination shall not take effect until the expiration of 60 days after the date on which the stockholders were notified of the final result of the vote; and

(B) a special meeting of the stockholders of the affected banks or associations shall be held during the period referred to in subparagraph (A) to reconsider the vote.

(4) Vote on reconsideration

If a majority of stockholders of any one of the affected banks or associations voting, in person or by written proxy, at a duly authorized stockholders' meeting, vote against the proposed merger, transfer, or termination, such action shall not take place.

(5) Failure to file petition

If a petition for reconsideration of such vote is either not filed prior to the 60th day after the vote or, if timely filed, is not signed by at least 15 percent of the stockholders, the merger, transfer, or termination shall become effective in accordance with the plan of merger, transfer, or termination.

(Pub. L. 92–181, title VII, §7.9, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1648; amended Pub. L. 100–399, title IV, §408(n), (o), Aug. 17, 1988, 102 Stat. 1002; Pub. L. 115–334, title V, §5411(40), Dec. 20, 2018, 132 Stat. 4683.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (c). Pub. L. 115–334 struck out subsec. (c) which related to special reconsideration regarding the organization as a separate association by certain associations that had voluntarily merged with one or more associations.

1988—Subsec. (a)(1). Pub. L. 100–399, §408(n)(1), substituted "this chapter" for "section 2252(a)(2) of this title".

Subsec. (a)(4). Pub. L. 100–399, §408(n)(5), redesignated par. (5) as (4).

Pub. L. 100–399, §408(n)(2), inserted reference to section 2279f–1 of this title.

Subsec. (a)(5). Pub. L. 100–399, §408(n)(5), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 100–399, §408(n)(3), substituted "or" for "and".

Subsec. (a)(6). Pub. L. 100–399, §408(n)(5), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 100–399, §408(n)(4), substituted "section 2279f" for "section 2279f–1".

Subsec. (a)(7). Pub. L. 100–399, §408(n)(5), redesignated par. (7) as (6).

Subsec. (b)(2). Pub. L. 100–399, §408(o), struck out comma before "shall not take effect" and substituted "such banks or" for "such".

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.

SUBPART 4—TERMINATION AND DISSOLUTION OF INSTITUTIONS

EDITORIAL NOTES

CODIFICATION

Pub. L. 100–399, title IV, §408(m), Aug. 17, 1988, 102 Stat. 1002, redesignated subpart 3 as 4.

§2279d. Termination of System institution status

(a) Conditions

A System institution may terminate the status of the institution as a System institution if—

(1) the institution provides written notice to the Farm Credit Administration Board not later than 90 days prior to the proposed termination date;

(2) the termination is approved by the Farm Credit Administration Board;

(3) the appropriate Federal or State authority grants approval to charter the institution as a bank, savings and loan association, or other financial institution;

(4) the institution pays to the Farm Credit Insurance Fund the amount by which the total capital of the institution exceeds 6 percent of the assets;

(5) the institution pays or makes adequate provision for payment of all outstanding debt obligations of the institution;

(6) the termination is approved by a majority of the stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting, held prior to giving notice to the Farm Credit Administration Board; and

(7) the institution meets such other conditions as the Farm Credit Administration Board by regulation considers appropriate.

(b) Effect

On termination of its status as a System institution—

(1) the Farm Credit Administration Board shall revoke the charter of the institution; and

(2) the institution shall no longer be an instrumentality of the United States under this chapter.

(Pub. L. 92–181, title VII, §7.10, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1650; amended Pub. L. 115–334, title V, §5411(41), Dec. 20, 2018, 132 Stat. 4683.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a)(4). Pub. L. 115–334 added par. (4) and struck out former par. (4) which read as follows: "the institution pays to the Farm Credit Assistance Fund, as created under section 2278b–5 of this title, if the termination is prior to January 1, 1992, or pays to the Farm Credit Insurance Fund, if the termination is after such date, the amount by which the total capital of the institution exceeds, 6 percent of the assets;".

PART C—APPROVAL OF DISCLOSURE INFORMATION AND ISSUANCE OF CHARTERS BY THE FARM CREDIT ADMINISTRATION BOARD

§2279e. Approval of disclosure information and issuance of charters

(a) Disclosure of information

(1) Approval of plan

With respect to any plan of merger, transfer of lending authority, dissolution, or termination, prior to submission to the voters (voting stockholders and, where required, contributors to guaranty funds) of the institutions involved, such plan shall be submitted to the Farm Credit Administration Board, together with all information that is to be distributed to the voters with respect to the contemplated action, including an enumerated statement of the anticipated benefits and potential disadvantages of such action.

(2) Notice of approval

On notification that the Farm Credit Administration Board has approved such plan for submission to the stockholders, or after 60 days of no action on the plan by the Board, the submitting institutions may submit the plan, together with the disclosure information, to the voters for the prescribed vote.

(b) Notice of reasons for disapproval

If the Farm Credit Administration Board disapproves the plan for submission to the stockholders, notification to the submitting institutions shall specify the reasons for the determination by the Board. If such plan is determined to be inadequate, it shall not be submitted to the voters for a vote.

(c) Federal charter

Each plan of merger or transfer of lending authority may include a proposed new or revised Federal charter for the merged or transferee entity. The Farm Credit Administration Board shall issue such charter on the approval of the plan, as prescribed in this subchapter, unless the Board determines that the charter submitted is not consistent with this chapter.

(Pub. L. 92–181, title VII, §7.11, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1651; amended Pub. L. 100–399, title IV, §408(p), Aug. 17, 1988, 102 Stat. 1002; Pub. L. 102–237, title V, §502(n), Dec. 13, 1991, 105 Stat. 1870.)

EDITORIAL NOTES

AMENDMENTS

1991—Subsec. (a)(2). Pub. L. 102–237 substituted "60 days" for "30 days".

1988—Subsec. (a)(1). Pub. L. 100–399 substituted "transfer of lending authority" for "transfer or assignment of lending authority" and "the institutions involved" for "such institutions".

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.

PART D—MERGERS OF LIKE ENTITIES

§2279f. Merger of similar banks

(a) In general

Banks organized or operating under this chapter may merge with banks in other districts operating under the same subchapter if the plan of merger is approved by—

- (1) the Farm Credit Administration Board;
- (2) the respective Boards of Directors of the banks involved;
- (3) a majority vote of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholders' meeting, with each association having a number of votes equal to the number of such association's voting stockholders; and
- (4) in the case of a bank for cooperatives, a majority of the total equity interests in such merging bank for cooperatives (including allocated, but not unallocated, surplus and reserves) held by those stockholders or subscribers to the guaranty fund of the bank voting.

(b) Powers and capitalization

Sections 2279a–2 and 2279a–3 of this title shall apply to banks merged under this section.

(c) Board of directors

(1) In general

After a merger under subsection (a), a board of directors shall be created for the resulting bank.

(2) Composition

The board shall be composed of—

- (A) two directors elected by each of the bank boards, with at least one such director from each bank being elected by the eligible stockholders of, or subscribers to, the guaranty fund of the merging banks; and
- (B) one outside director elected by the directors elected under subparagraph (A).

(3) Outside director

(A) Qualifications

The outside director elected under paragraph (2)(B) shall be experienced in financial services and credit, and within the 2-year period prior to such election, shall not have been a borrower from, shareholder in, or director, officer, employee, or agent of any institution of the Farm Credit System.

(B) Failure to elect

If the other members of the board fail to elect an outside director, the Farm Credit Administration Board shall appoint a qualified person to serve on the board of directors until such member is so elected.

(4) Bylaws

Notwithstanding paragraph (2), the bylaws of the merged bank may, with the approval of the Farm Credit Administration, provide for a different number of directors to be selected in a different manner, except that the bylaws shall provide for at least one outside director.

(Pub. L. 92–181, title VII, §7.12, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1652; amended Pub. L. 100–399, title IV, §408(q), (r), Aug. 17, 1988, 102 Stat. 1002, 1003.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–399, §408(q), substituted "Powers and capitalization" for "Procedures" in

heading and, in amending text generally, substituted "Sections 2279a–2 and 2279a–3 of this title" for "The provisions of sections 2279a–2 through 2279a–4 of this title".

Subsec. (c)(2)(B). Pub. L. 100–399, §408(r), substituted "directors" for "members".

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.

§2279f–1. Merger of similar associations

(a) In general

Associations may voluntarily merge with other like associations if the plan of merger is approved by—

- (1) the Farm Credit Administration Board;
- (2) the respective Boards of Directors of the associations involved;
- (3) a majority vote of the stockholders of each association voting, in person or by proxy, at a duly authorized stockholders' meeting; and
- (4) the Farm Credit Banks involved.

(b) Procedures

The provisions of subsections (b) and (c) of section 2279c–1 of this title shall apply to associations merged under this section.

(Pub. L. 92–181, title VII, §7.13, as added Pub. L. 100–233, title IV, §416, Jan. 6, 1988, 101 Stat. 1653; amended Pub. L. 100–399, title IV, §408(s), (t), Aug. 17, 1988, 102 Stat. 1003.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100–399, §408(s), substituted "the Farm Credit Banks involved" for "the Farm Credit Bank".

Subsec. (b). Pub. L. 100–399, §408(t), substituted "subsections (b) and (c)" for "subsections (b), (c), and (d)".

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.

PART E—TAXATION OF MERGER TRANSACTIONS

§2279g. Transactions to accomplish mergers exempt from certain State taxes

No State or political subdivision thereof may treat the merger or consolidation of two or more institutions of the Farm Credit System under this subchapter or title IV of the Agricultural Credit Act of 1987 as resulting in a change of ownership of any property owned by any of such merging or

consolidating institutions, for purposes of any law of such State or political subdivision providing for reassessment of property on the occurrence of a change of ownership or imposing a tax on the ownership or transfer of property.

(Pub. L. 92–181, title VII, §7.14, as added Pub. L. 100–399, title IV, §408(u), Aug. 17, 1988, 102 Stat. 1003.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Agricultural Credit Act of 1987, referred to in text, is Pub. L. 100–233, Jan. 6, 1988, 101 Stat. 1568. Title IV of that Act amended this chapter. For complete classification of this Act to the Code see Short Title of 1988 Amendment note set out under section 2001 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section 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 an Effective Date of 1988 Amendment note under section 2002 of this title.

SUBCHAPTER VIII—AGRICULTURAL MORTGAGE SECONDARY MARKET

§2279aa. Definitions

For purposes of this subchapter:

(1) Agricultural real estate

The term "agricultural real estate" means—

(A) a parcel or parcels of land, or a building or structure affixed to the parcel or parcels, that—

- (i) is used for the production of one or more agricultural commodities or products; and
- (ii) consists of a minimum acreage or is used in producing minimum annual receipts, as determined by the Corporation; or

(B) a principal residence that is a single family, moderate-priced residential dwelling located in a rural area, excluding—

- (i) any community having a population in excess of 2,500 inhabitants; and
- (ii) any dwelling, excluding the land to which the dwelling is affixed, with a value exceeding \$100,000 (as adjusted for inflation).

(2) Board

The term "Board" means the board of directors established under section 2279aa–2 of this title.

(3) Certified facility

The term "certified facility" means—

(A) an agricultural mortgage marketing facility that is certified under section 2279aa–5 of this title; or

(B) the Corporation and any affiliate thereof.

(4) Corporation

The term "Corporation" means the Federal Agricultural Mortgage Corporation established in

section 2279aa–1 of this title.

(5) Guarantee

The term "guarantee" means the guarantee of timely payment of the principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans, in accordance with this subchapter.

(6) Originator

The term "originator" means any Farm Credit System institution, bank, insurance company, business and industrial development company, savings and loan association, association of agricultural producers, agricultural cooperative, commercial finance company, trust company, credit union, or other entity that originates and services agricultural mortgage loans.

(7) Qualified loan

The term "qualified loan" means an obligation—

(A)(i) that is secured by a fee-simple or leasehold mortgage with status as a first lien, on agricultural real estate located in the United States that is not subject to any legal or equitable claims deriving from a preceding fee-simple or leasehold mortgage;

(ii) of—

(I) a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States; or

(II) a private corporation or partnership whose members, stockholders, or partners holding a majority interest in the corporation or partnership are individuals described in subclause (I); and

(iii) of a person, corporation, or partnership that has training or farming experience that, under criteria established by the Corporation, is sufficient to ensure a reasonable likelihood that the loan will be repaid according to its terms;

(B) that is the portion of a loan guaranteed by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except that—

(i) subsections (b) and (c) of section 2279aa–6 of this title, and sections 2279aa–8 and 2279aa–9 of this title, shall not apply to the portion of a loan guaranteed by the Secretary or to an obligation, pool, or security representing an interest in or obligation backed by a pool of obligations relating to the portion of a loan guaranteed by the Secretary; and

(ii) the portion of a loan guaranteed by the Secretary shall be considered to meet all standards for qualified loans for all purposes under this chapter; or

(C) that is a loan, or an interest in a loan, for an electric or telephone facility by a cooperative lender to a borrower that has received, or is eligible to receive, a loan under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.).

(8) State

The term "State" has the meaning given such term in section 2277a of this title.

(Pub. L. 92–181, title VIII, §8.0, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1686; amended Pub. L. 100–399, title VI, §601(a), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 101–624, title XVIII, §1839, Nov. 28, 1990, 104 Stat. 3834; Pub. L. 104–105, title I, §§101, 102, 108(c)(1), 109(b)(1), Feb. 10, 1996, 110 Stat. 163–165; Pub. L. 110–234, title V, §5406(a), May 22, 2008, 122 Stat. 1158; Pub. L. 110–246, §4(a), title V, §5406(a), June 18, 2008, 122 Stat. 1664, 1920; Pub. L. 115–334, title V, §5411(42), Dec. 20, 2018, 132 Stat. 4683.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consolidated Farm and Rural Development Act, referred to in par. (7)(B), is title III of Pub. L. 87–128, Aug. 8, 1961, 75 Stat. 307, which is classified principally to chapter 50 (§1921 et seq.) of Title 7, Agriculture.

For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

The Rural Electrification Act of 1936, referred to in par. (7)(C), is act May 20, 1936, ch. 432, 49 Stat. 1363, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

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, §5411(42)(A), substituted "means the board of directors established under section 2279aa–2 of this title." for "means—

"(A) the interim board of directors established in section 2279aa–2(a) of this title; and

"(B) the permanent board of directors established in section 2279aa–2(b) of this title;
as the case may be."

Par. (6). Pub. L. 115–334, §5411(42)(B), (C), redesignated par. (7) as (6) and struck out former par. (6) which defined "interim board" to mean the interim board of directors established in section 2279aa–2(a) of this title.

Par. (7). Pub. L. 115–334, §5411(42)(C), (D), redesignated par. (9) as (7) and substituted "(b) and (c)" for "(b) through (d)" in subpar. (B)(i). Former par. (7) redesignated (6).

Par. (8). Pub. L. 115–334, §5411(42)(B), (C), redesignated par. (10) as (8) and struck out former par. (8) which defined "permanent board" to mean the permanent board of directors established in section 2279aa–2(b) of this title.

Pars. (9), (10). Pub. L. 115–334, §5411(42)(C), redesignated pars. (9) and (10) as (7) and (8), respectively.

2008—Par. (9)(C). Pub. L. 110–246, §5406(a), added subpar. (C).

1996—Par. (1)(B)(ii). Pub. L. 104–105, §101, substituted ", excluding the land to which the dwelling is affixed, with a value" for "with a purchase price".

Par. (3)(A). Pub. L. 104–105, §102(1), substituted "an agricultural mortgage marketing" for "a secondary marketing agricultural loan".

Par. (3)(B). Pub. L. 104–105, §102(2), struck out ", but only with respect to qualified loans described in paragraph (9)(B)" after "thereof".

Par. (9)(B)(i). Pub. L. 104–105, §§108(c)(1), 109(b)(1), substituted "(d)" for "(f)" and "2279aa–8" for "2279aa–7, 2279aa–8,".

1990—Par. (3). Pub. L. 101–624, §1839(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'certified facility' means a secondary marketing agricultural loan facility that is certified under section 2279aa–5 of this title."

Par. (9). Pub. L. 101–624, §1839(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "The term 'qualified loan' means an obligation that—

"(A) is secured by a fee-simple or leasehold mortgage with status as a first lien on agricultural real estate located in the United States that is not subject to any legal or equitable claims deriving from a preceding fee-simple or leasehold mortgage;

"(B) is an obligation of—

"(i) a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States; or

"(ii) a private corporation or partnership whose members, stockholders, or partners holding a majority interest in the corporation or partnership are individuals described in clause (i); and

"(C) is an obligation of a person, corporation, or partnership that has training or farming experience that, under criteria established by the Corporation, is sufficient to ensure a reasonable likelihood that the loan will be repaid according to its terms."

1988—Par. (9)(B)(ii). Pub. L. 100–399 substituted "holding" for "hold" and struck out "and" before "are".

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.

STATEMENT OF PURPOSE

Pub. L. 100-233, title VII, §701, Jan. 6, 1988, 101 Stat. 1686, provided that: "It is the purpose of this subtitle [subtitle A (§§701-705) of title VII of Pub. L. 100-233, enacting this subchapter, amending sections 2012, 2033, 2072, and 2093 of this title and section 9105 of Title 31, Money and Finance, and enacting provisions set out as a note below]—

"(1) to establish a corporation chartered by the Federal Government;

"(2) to authorize the certification of agricultural mortgage marketing facilities by the corporation;

"(3) to provide for a secondary marketing arrangement for agricultural real estate mortgages that meet the underwriting standards of the corporation—

"(A) to increase the availability of long-term credit to farmers and ranchers at stable interest rates;

"(B) to provide greater liquidity and lending capacity in extending credit to farmers and ranchers;

and

"(C) to provide an arrangement for new lending to facilitate capital market investments in providing long-term agricultural funding, including funds at fixed rates of interest; and

"(4) to enhance the ability of individuals in small rural communities to obtain financing for moderate-priced homes."

GAO STUDIES

Pub. L. 100-233, title VII, §704, Jan. 6, 1988, 101 Stat. 1706, as amended by Pub. L. 100-399, title VI, §603, Aug. 17, 1988, 102 Stat. 1006, directed Comptroller General of United States to conduct studies of (1) implementation of amendments made by subtitle A (§§701-705) of title VII of Pub. L. 100-233 (which enacted this subchapter and amended sections 2012, 2033, 2072, and 2093 of this title and section 9105 of Title 31, Money and Finance) by Federal Agricultural Mortgage Corporation and effect of operations of Corporation on producers, Farm Credit System, and other lenders, and capital markets, (2) feasibility and appropriateness of promoting establishment of a secondary market for securities representing interests in, or obligations backed by, pools of agricultural real estate loans for which a guarantee had not been provided by Federal Agricultural Mortgage Corporation, and (3) feasibility of expanding authority granted under amendments made by such subtitle A to authorize sale of securities based on or backed by a trust or pool consisting of loans made to farm-related and rural small businesses, and required, not later than Jan. 6, 1990, Comptroller General to transmit to Congress a report on the studies, including therein such recommendations for administrative action and legislation as might be appropriate.

PART A—ESTABLISHMENT AND ACTIVITIES OF FEDERAL AGRICULTURAL MORTGAGE CORPORATION

§2279aa-1. Federal Agricultural Mortgage Corporation

(a) Establishment

(1) In general

There is hereby established a corporation to be known as the Federal Agricultural Mortgage Corporation, which shall be a federally chartered instrumentality of the United States.

(2) Institution within Farm Credit System

The Corporation shall be an institution of the Farm Credit System.

(3) Liability

(A) Corporation

The Corporation shall not be liable for any debt or obligation of any other institution of the

Farm Credit System.

(B) System institutions

The Farm Credit System and System institutions (other than the Corporation) shall not be liable for any debt or obligation of the Corporation.

(b) Duties

The Corporation shall—

(1) in consultation with originators, develop uniform underwriting, security appraisal, and repayment standards for qualified loans;

(2) determine the eligibility of agricultural mortgage marketing facilities to contract with the Corporation for the provision of guarantees for specific mortgage pools;

(3) provide guarantees for the timely repayment of principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans; and

(4) purchase qualified loans and issue securities representing interests in, or obligations backed by, the qualified loans, guaranteed for the timely repayment of principal and interest.

(Pub. L. 92–181, title VIII, §8.1, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1687; amended Pub. L. 104–105, title I, §103, Feb. 10, 1996, 110 Stat. 163.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104–105 added par. (4).

§2279aa–2. Board of directors

(a) In general

(1) Establishment

The Corporation shall be under the management of the board of directors.

(2) Composition

The Board shall consist of 15 members, of which—

(A) 5 members shall be elected by holders of common stock that are insurance companies, banks, or other financial institutions or entities;

(B) 5 members shall be elected by holders of common stock that are Farm Credit System institutions; and

(C) 5 members shall be appointed by the President, by and with the advice and consent of the Senate—

(i) which members shall not be, or have been, officers or directors of any financial institutions or entities;

(ii) which members shall be representatives of the general public;

(iii) of which members not more than 3 shall be members of the same political party; and

(iv) of which members at least 2 shall be experienced in farming or ranching.

(3) Vacancy

(A) Elected members

Subject to paragraph (5), a vacancy among the members elected to the Board in the manner described in subparagraph (A) or (B) of paragraph (2) shall be filled by the Board from among persons eligible for election to the position for which the vacancy exists.

(B) Appointed members

A vacancy among the members appointed to the Board under paragraph (2)(C) shall be filled in the manner in which the original appointment was made.

(4) Continuation of membership

If—

(A) any member of the Board who was appointed or elected to the Board from among persons who are representatives of banks, other financial institutions or entities, insurance companies, or Farm Credit System institutions ceases to be such a representative; or

(B) any member who was appointed from persons who are not or have not been directors or officers of any financial institution or entity becomes a director or an officer of any financial institution or entity;

such member may continue as a member for not longer than the 45-day period beginning on the date such member ceases to be such a representative, officer, or employee or becomes such a director or officer, as the case may be.

(5) Terms

(A) Appointed members

The members appointed by the President shall serve at the pleasure of the President.

(B) Elected members

The members elected under subparagraphs (A) and (B) of subsection (b)(2) shall each be elected annually for a term ending on the date of the next annual meeting of the common stockholders of the Corporation and shall serve until their successors are elected and qualified. Any seat on the Board that becomes vacant after the annual election of the directors shall be filled by the members of the Board from the same category of directors, but only for the unexpired portion of the term.

(C) Vacancy appointment

Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed only for the remainder of such term.

(D) Service after expiration of term

A member may serve after the expiration of the term of the member until the successor of the member has taken office.

(6) Quorum

8 members of the Board shall constitute a quorum.

(7) No additional pay for Federal officers or employees

Members of the Board who are fulltime officers or employees of the United States shall receive no additional pay by reason of service on the Board.

(8) Chairperson

The President shall designate 1 of the members of the Board who are appointed by the President as the chairperson of the Board.

(9) Meetings

The Board shall meet at the call of the chairperson or a majority of its members.

(b) Officers and staff

The Board may appoint, employ, fix the pay of, and provide other allowances and benefits for such officers and employees of the Corporation as the Board determines to be appropriate.

(Pub. L. 92–181, title VIII, §8.2, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1688; amended Pub. L. 100–399, title VI, §601(b), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 115–334, title V, §5411(43), Dec. 20, 2018, 132 Stat. 4684.)

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–334, §5411(43)(A)–(C)(i), redesignated subsec. (b) as (a), substituted "In general" for "Permanent board" in heading and "Board" for "permanent board" wherever appearing in text, and struck out former subsec. (a) which established an interim board of directors until the first meeting of a permanent board of directors.

Subsec. (a)(1). Pub. L. 115–334, §5411(43)(B), added par. (1) and struck out former par. (1) which required the Corporation to establish a permanent board of directors for financial institutions once certain thresholds were met.

Subsec. (a)(3). Pub. L. 115–334, §5411(43)(C)(ii)–(iv), redesignated par. (4) as (3), substituted "paragraph (5)" for "paragraph (6)" in subpar. (A), and struck out former par. (3) which set a date by which the presidential appointees to the permanent board were to be appointed.

Subsec. (a)(4) to (10). Pub. L. 115–334, §5411(43)(C)(iii), redesignated pars. (5) to (10) as (4) to (9), respectively. Former par. (4) redesignated (3).

Subsecs. (b), (c). Pub. L. 115–334, §5411(43)(D), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

1988—Subsecs. (a)(1), (b)(3)(B). Pub. L. 100–399 substituted "date of the enactment" for "effective date", both of which for purposes of codification were translated as "January 6, 1988,".

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.

§2279aa–3. Powers and duties of Corporation and Board

(a) Guarantees

After the Board has been duly constituted, subject to the other provisions of this subchapter and other commitments and requirements established pursuant to law, the Corporation may provide guarantees on terms and conditions determined by the Corporation of securities issued on the security of, or in participation in, pooled interests in qualified loans.

(b) Duties of Board

(1) In general

The Board shall—

- (A) determine the general policies that shall govern the operations of the Corporation;
- (B) select, appoint, and determine the compensation of qualified persons to fill such offices as may be provided for in the bylaws of the Corporation; and
- (C) assign to such persons such executive functions, powers, and duties as may be prescribed by the bylaws of the Corporation or by the Board.

(2) Executive officers and functions

The persons elected or appointed under paragraph (1)(B) shall be the executive officers of the Corporation and shall discharge the executive functions, powers, and duties of the Corporation.

(c) Powers of Corporation

The Corporation shall be a body corporate and shall have the following powers:

- (1) To operate under the direction of its Board.
- (2) To issue stock in the manner provided in section 2279aa–4 of this title.
- (3) To adopt, alter, and use a corporate seal, which shall be judicially noted.
- (4) To provide for a president, 1 or more vice presidents, secretary, treasurer, and such other officers, employees, and agents, as may be necessary, define their duties and compensation levels, all without regard to title 5, and require surety bonds or make other provisions against losses

occasioned by acts of such persons.

(5) To provide guarantees in the manner provided under section 2279aa-6 of this title.

(6) To have succession until dissolved by a law enacted by the Congress.

(7) To prescribe bylaws, through the Board, not inconsistent with law, that shall provide for—

(A) the classes of the stock of the Corporation; and

(B) the manner in which—

(i) the stock shall be issued, transferred, and retired;

(ii) the officers, employees, and agents of the Corporation are selected;

(iii) the property of the Corporation is acquired, held, and transferred;

(iv) the commitments and other financial assistance of the Corporation are made;

(v) the general business of the Corporation is conducted; and

(vi) the privileges granted by law to the Corporation are exercised and enjoyed;

(8) To prescribe such standards as may be necessary to carry out this subchapter.

(9) To enter into contracts and make payments with respect to the contracts.

(10) To sue and be sued in its corporate capacity and to complain and defend in any action brought by or against the Corporation in any State or Federal court of competent jurisdiction.

(11) To make and perform contracts, agreements, and commitments with persons and entities both inside and outside of the Farm Credit System.

(12) To acquire, hold, lease, mortgage or dispose of, at public or private sale, real and personal property, purchase or sell any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary and convenient to the business of the Corporation.

(13) To purchase, hold, sell, or assign a qualified loan, to issue a guaranteed security, representing an interest in, or an obligation backed by, the qualified loan, and to perform all the functions and responsibilities of an agricultural mortgage marketing facility operating as a certified facility under this subchapter.

(14) To establish, acquire, and maintain affiliates (as such term is defined in section 2279aa-11(e) of this title) under applicable State laws to carry out any activities that otherwise would be performed directly by the Corporation under this subchapter.

(15) To exercise such other incidental powers as are necessary to carry out the powers, duties, and functions of the Corporation in accordance with this subchapter.

(d) Federal Reserve banks as depositories and fiscal agents

The Federal Reserve banks shall act as depositories for, and as fiscal agents or custodians of, the Corporation.

(e) Access to book-entry system

The Corporation shall have access to the book-entry system of the Federal Reserve System.

(Pub. L. 92-181, title VIII, §8.3, as added Pub. L. 100-233, title VII, §702, Jan. 6, 1988, 101 Stat. 1691; amended Pub. L. 100-399, title VI, §601(c), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 102-237, title V, §503(c), Dec. 13, 1991, 105 Stat. 1877; Pub. L. 102-552, title III, §308(b)(1), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104-105, title I, §§104, 105, Feb. 10, 1996, 110 Stat. 163.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (c)(13) to (15). Pub. L. 104-105, §104, added par. (13) and redesignated former pars. (13) and (14) as (14) and (15), respectively.

Subsec. (d). Pub. L. 104-105, §105(1), which directed the amendment of subsec. (d) by substituting "shall act as depositories for, and" for "may act as depositories for, or", was executed by making the substitution for "may act as depositories for, or" to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 104-105, §105(2), substituted "Corporation shall have access to" for "Secretary of the Treasury may authorize the Corporation to use".

1992—Subsec. (c)(13). Pub. L. 102-552 substituted "2279aa-11(e)" for "2279aa-11(g)".

1991—Subsec. (c)(13), (14). Pub. L. 102–237 added par. (13) and redesignated former par. (13) as (14).

1988—Subsec. (c)(4). Pub. L. 100–399 substituted "such persons" for "the persons".

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.

§2279aa–4. Stock issuance

(a) Voting common stock

(1) Issue

(A) In general

The Corporation shall issue voting common stock having such par value as may be fixed by the Board from time to time.

(B) Number of votes

Each share of voting common stock shall be entitled to one vote with rights of cumulative voting at all elections of directors.

(C) Offers

(i) In general

The Board shall offer the voting common stock to banks, other financial institutions, insurance companies, and System institutions under such terms and conditions as the Board may adopt.

(ii) Requirements

The voting common stock shall be fairly and broadly offered to ensure that—

(I) no institution or institutions acquire a disproportionate share of the total quantity of the voting common stock outstanding of a class of stock; and

(II) capital contributions and issuances of voting common stock for the contributions are fairly distributed between entities eligible to hold class A stock and class B stock.

(D) Classes of stock

(i) In general

The stock shall be divided into two classes with the same par value per share.

(ii) Class A stock

Class A stock may be held only by entities that are not Farm Credit System institutions and that are entitled to vote for directors specified in section 2279aa–2(a)(2)(A) of this title, including national banking associations (which shall be allowed to purchase and hold such stock).

(iii) Class B stock

Class B stock may be held only by Farm Credit System institutions that are entitled to vote for directors specified in section 2279aa–2(a)(2)(B) of this title.

(2) Limitation on issue

After the date the permanent board first meets with a quorum of its members present, voting common stock of the Corporation may be issued only to originators and certified facilities.

(3) Authority of Board to establish terms and procedures

The Board shall adopt such terms, conditions, and procedures with regard to the issue of stock under this section as may be necessary, including the establishment of a maximum amount limitation on the number of shares of voting common stock that may be outstanding at any time.

(4) Transferability

Subject to such limitations as the Board may impose, any share of any class of voting common stock issued under this section shall be transferable among the institutions or entities to which shares of such class of common stock may be offered under paragraph (1), except that, as to the Corporation, such shares shall be transferable only on the books of the Corporation.

(5) Maximum number of shares

No stockholder, other than a holder of class B stock, may own, directly or indirectly, more than 33 percent of the outstanding shares of such class of the voting common stock of the Corporation.

(b) Required capital contributions

(1) In general

The Corporation may require each originator and each certified facility to make, or commit to make, such nonrefundable capital contributions to the Corporation as are reasonable and necessary to meet the administrative expenses of the Corporation.

(2) Stock issued as consideration for contribution

The Corporation, from time to time, shall issue to each originator or certified facility voting common stock evidencing any capital contributions made pursuant to this subsection.

(c) Dividends

(1) In general

Such dividends as may be declared by the Board, in the discretion of the Board, shall be paid by the Corporation to the holders of the voting common stock of the Corporation pro rata based on the total number of shares of both classes of stock outstanding.

(2) Reserves requirement

No dividend may be declared or paid by the Board under this section unless the Board determines that adequate provision has been made for the reserve required under section 2279aa-10(c)(1) of this title.

(3) Dividends prohibited while obligations are outstanding

No dividend may be declared or paid by the Board under this section while any obligation issued by the Corporation to the Secretary of the Treasury under section 2279aa-13 of this title remains outstanding.

(d) Nonvoting common stock

The Corporation is authorized to issue nonvoting common stock having such par value as may be fixed by the Board from time to time. Such nonvoting common stock shall be freely transferable, except that, as to the Corporation, such stock shall be transferable only on the books of the Corporation. Such dividends as may be declared by the Board, in the discretion of the Board, may be paid by the Corporation to the holders of the nonvoting common stock of the Corporation, subject to paragraphs (2) and (3) of subsection (c).

(e) Preferred stock

(1) Authority of Board

The Corporation is authorized to issue nonvoting preferred stock having such par value as may be fixed by the Board from time to time. Such preferred stock issued shall be freely transferable, except that, as to the Corporation, such stock shall be transferred only on the books of the Corporation.

(2) Rights of preferred stock

Subject to paragraphs (2) and (3) of subsection (c), the holders of the preferred stock shall be entitled to such rate of cumulative dividends, and such holders shall be subject to such redemption or other conversion provisions, as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid.

(3) Preference on termination of business

In the event of any liquidation, dissolution, or winding up of the business of the Corporation, the holders of the preferred shares of stock shall be paid in full at the par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

(Pub. L. 92–181, title VIII, §8.4, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1692; amended Pub. L. 100–399, title VI, §601(d), (e), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 115–334, title V, §5411(44), Dec. 20, 2018, 132 Stat. 4684.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115–334, within existing provisions, designated first and second sentences as subpars. (A) and (B), respectively, added subpar. (C) and struck out former third sentence which read "Voting shall be by classes as described in section 2279aa–2(a)(9) of this title.", designated fourth to sixth sentences collectively as subpar. (D) and individually as cls. (i) to (iii), respectively, thereof, substituted "2279aa–2(a)(2)(A)" for "2279aa–2(b)(2)(A)" in subpar. (D)(ii) and "2279aa–2(a)(2)(B)" for "2279aa–2(b)(2)(B)" in subpar. (D)(iii), and inserted subpar. and cl. headings.

1988—Subsec. (a)(1). Pub. L. 100–399, §601(d), in penultimate sentence, inserted "and" after "institutions" and inserted ", including national banking associations (which shall be allowed to purchase and hold such stock)" before period at end.

Subsec. (e)(1). Pub. L. 100–399, §601(e), substituted "books of the Corporation" for "books of the Association".

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.

§2279aa–5. Certification of agricultural mortgage marketing facilities

(a) Eligibility standards

(1) Establishment required

Within 120 days after the date on which the permanent board first meets with a quorum present, the Corporation shall issue standards for the certification of agricultural mortgage marketing facilities (other than the Corporation), including eligibility standards in accordance with paragraph (2).

(2) Minimum requirements

To be eligible to be certified under the standards referred to in paragraph (1), an agricultural mortgage marketing facility (other than the Corporation) shall—

(A) be an institution of the Farm Credit System or a corporation, association, or trust organized under the laws of the United States or of any State;

(B) meet or exceed capital standards established by the Board;

(C) have as one of the purposes of the facility, the sale or resale of securities representing interests in, or obligations backed by, pools of qualified loans that have been provided

guarantees by the Corporation;

(D) demonstrate managerial ability with respect to agricultural mortgage loan underwriting, servicing, and marketing that is acceptable to the Corporation;

(E) adopt appropriate agricultural mortgage loan underwriting, appraisal, and servicing standards and procedures that meet or exceed the standards established by the Board;

(F) for purposes of enabling the Corporation to examine the facility, agree to allow officers or employees of the Corporation to have access to all books, accounts, financial records, reports, files, and all other papers, things, or property, of any type whatsoever, belonging to or used by the Corporation that are necessary to facilitate an examination of the operations of the facility in connection with securities, and the pools of qualified loans that back securities, for which the Corporation has provided guarantees; and

(G) adopt appropriate minimum standards and procedures relating to loan administration and disclosure to borrowers concerning the terms and rights applicable to loans for which guarantee is provided, in conformity with uniform standards established by the Corporation.

(3) Nondiscrimination requirement

The standards established under this subsection shall not discriminate between or against Farm Credit System and non-Farm Credit System applicants.

(b) Certification by Corporation

Within 60 days after receiving an application for certification under this section, the Corporation shall certify the facility if the facility meets the standards established by the Corporation under subsection (a)(1).

(c) Maximum time period for certification

Any certification by the Corporation of an agricultural mortgage marketing facility shall be effective for a period determined by the Corporation of not to exceed 5 years.

(d) Revocation

(1) In general

After notice and an opportunity for a hearing, the Corporation may revoke the certification of an agricultural mortgage marketing facility if the Corporation determines that the facility no longer meets the standards referred to in subsection (a).

(2) Effect of revocation

Revocation of a certification shall not affect any pool guarantee that has been issued by the Corporation.

(e) Affiliation of FCS institutions with facility

(1) Establishment of affiliate authorized

Notwithstanding any other provision of this chapter, any Farm Credit System institution, acting for such institution alone or in conjunction with one or more other such institutions, may establish and operate, as an affiliate, an agricultural mortgage marketing facility if, within a reasonable time after such establishment, such facility obtains and thereafter retains certification under subsection (b) as a certified facility.

(2) Exclusive agency agreement authorized

Any number of Farm Credit System institutions (other than the Corporation) may enter into an agreement with any certified facility (including an affiliate established under paragraph (1)) to sell the qualified loans of such institutions exclusively to or through the facility.

(Pub. L. 92-181, title VIII, §8.5, as added Pub. L. 100-233, title VII, §702, Jan. 6, 1988, 101 Stat. 1694; amended Pub. L. 104-105, title I, §106, Feb. 10, 1996, 110 Stat. 164.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–105, §106(1)(A), inserted "(other than the Corporation)" after "facilities".

Subsec. (a)(2). Pub. L. 104–105, §106(1)(B), inserted "(other than the Corporation)" after "facility" in introductory provisions.

Subsec. (e)(1). Pub. L. 104–105, §106(2), struck out "(other than the Corporation)" after "System institution".

§2279aa–6. Guarantee of qualified loans

(a) Guarantee authorized for certified facilities

(1) In general

Subject to the requirements of this section and on such other terms and conditions as the Corporation shall consider appropriate, the Corporation—

(A) shall guarantee the timely payment of principal and interest on the securities issued by a certified facility that represents interests solely in, or obligations fully backed by, any pool consisting solely of qualified loans which meet the applicable standards established under section 2279aa–8 of this title and which are held by such facility; and

(B) may issue a security, guaranteed as to the timely payment of principal and interest, that represents an interest solely in, or an obligation fully backed by, a pool consisting of qualified loans that—

- (i) meet the applicable standards established under section 2279aa–8 of this title; and
- (ii) have been purchased and held by the Corporation.

(2) Inability of facility to pay

If the facility is unable to make any payment of principal or interest on any security for which a guarantee has been provided by the Corporation under paragraph (1), the Corporation shall make such payment as and when due in cash, and on such payment shall be subrogated fully to the rights satisfied by such payment.

(3) Power of Corporation

Notwithstanding any other provision of law, the Corporation is empowered, in connection with any guarantee under this subsection, whether before or after any default, to provide by contract with the facility for the extinguishment, on default by the facility, of any redemption, equitable, legal, or other right, title, or interest of the facility in any mortgage or mortgages constituting the pool against which the guaranteed securities are issued. With respect to any issue of guaranteed securities, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such pool shall become the absolute property of the Corporation subject only to the unsatisfied rights of the holders of the securities based on and backed by such pool.

(b) Other responsibilities of and limitations on certified facilities

As a condition for providing any guarantees under this section for securities issued by a certified facility that represent interests in, or obligations backed by, any pool of qualified loans, the Corporation shall require such facility to agree to comply with the following requirements:

(1) Loan default resolution

The facility shall act in accordance with the standards of a prudent institutional lender to resolve loan defaults.

(2) Subrogation of United States and Corporation to interests of facility

The proceeds of any collateral, judgments, settlements, or guarantees received by the facility with respect to any loan in such pool, shall be applied, after payment of costs of collection—

- (A) first, to reduce the amount of any principal outstanding on any obligation of the Corporation that was purchased by the Secretary of the Treasury under section 2279aa–13 of

this title to the extent the proceeds of such obligation were used to make guarantees in connection with such securities; and

(B) second, to reimburse the Corporation for any such guarantee payments.

(3) Loan servicing

The originator of any loan in such pool shall be permitted to retain the right to service the loan.

(4) Minority participation in public offerings

The facility shall take such steps as may be necessary to ensure that minority owned or controlled investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of securities.

(5) No discrimination against States with borrowers rights

The facility may not refuse to purchase qualified loans originating in States that have established borrowers rights laws either by statute or under the constitution of such States, except that the facility may require discounts or charge fees reasonably related to costs and expenses arising from such statutes or constitutional provisions.

(c) Additional authority of Board

To ensure the liquidity of securities for which guarantees have been provided under this section, the Board shall adopt appropriate standards regarding—

- (1) the characteristics of any pool of qualified loans serving as collateral for such securities; and
- (2) transfer requirements.

(d) Purchase of guaranteed securities

(1) Purchase authority

The Corporation (and affiliates) may purchase, hold, and sell any securities guaranteed under this section by the Corporation that represent interests in, or obligations backed by, pools of qualified loans. Securities issued under this section shall have maturities and bear rates of interest as determined by the Corporation.

(2) Issuance of debt obligations

The Corporation (and affiliates) may issue debt obligations solely for the purpose of obtaining amounts for the purchase of any securities under paragraph (1), for the purchase of qualified loans (as defined in section 2279aa of this title), and for maintaining reasonable amounts for business operations (including adequate liquidity) relating to activities under this subsection.

(3) Terms and limitations

(A) Terms

The obligations issued under this subsection shall have maturities and bear rates of interest as determined by the Corporation, and may be redeemable at the option of the Corporation before maturity in the manner stipulated in the obligations.

(B) Requirement

Each obligation shall clearly indicate that the obligation is not an obligation of, and is not guaranteed as to principal and interest by, the Farm Credit Administration, the United States, or any other agency or instrumentality of the United States (other than the Corporation).

(C) Authority

The Corporation may not issue obligations pursuant to paragraph (2) under this subsection while any obligation issued by the Corporation under section 2279aa–13(a) of this title remains outstanding.

(Pub. L. 92–181, title VIII, §8.6, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1695; amended Pub. L. 100–399, title VI, §601(f)–(h), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 102–237, title V, §503(d), Dec. 13, 1991, 105 Stat. 1877; Pub. L. 104–105, title I, §§107, 108(a), (c)(2), 109(a), (b)(4), Feb. 10, 1996, 110 Stat. 164, 165; Pub. L. 110–234, title V, §5406(b), May 22,

2008, 122 Stat. 1158; Pub. L. 110–246, §4(a), title V, §5406(b), June 18, 2008, 122 Stat. 1664, 1920; Pub. L. 115–334, title V, §5411(45), Dec. 20, 2018, 132 Stat. 4685.)

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—Subsec. (d). Pub. L. 115–334, §5411(45)(A), (B), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to aggregate principal amounts of qualified loans and limits on provision of guarantees during certain years.

Subsec. (d)(2). Pub. L. 115–334, §5411(45)(C), substituted "2279aa of this title)" for "2279aa(9) of this title)".

Subsec. (e). Pub. L. 115–334, §5411(45)(B), redesignated subsec. (e) as (d).

2008—Subsec. (a)(1)(A), (B)(i). Pub. L. 110–246, §5406(b), inserted "applicable" before "standards".

1996—Subsec. (a)(1). Pub. L. 104–105, §107(1), designated part of existing text as subpar. (A) and added subpar. (B).

Subsec. (a)(2). Pub. L. 104–105, §108(c)(2), struck out "subject to the provisions of subsection (b) of this section" after "paragraph (1),".

Subsec. (b). Pub. L. 104–105, §§108(a), 109(a)(2), redesignated subsec. (d) as (b) and struck out heading and text of former subsec.(b). Text read as follows: "In the case of any pool referred to in subsection (a) of this section, the Corporation shall—

"(1) provide a guarantee only with respect to an individual pool of qualified loans on application of a certified facility;

"(2) provide a guarantee only if a reserve, or retained subordinated participating interests, in an amount equal to at least 10 percent of the outstanding principal amount of the loans constituting the pool has been established in accordance with this subchapter;

"(3) require that full recourse be taken against reserves and retained subordinated participating interests before any demand be made by the certified facility with respect to the guarantee of the Corporation; and

"(4) ensure the timely receipt of principal and interest due to security or obligation holders only after full recourse has been taken against such reserves and retained subordinated participating interests."

Subsec. (b)(4) to (6). Pub. L. 104–105, §109(b)(4), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out heading and text of former par. (4). Text read as follows: "The facility shall comply with the standards adopted by the Board under subsection (c) of this section in establishing and maintaining the pool."

Subsec. (c). Pub. L. 104–105, §109(a), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c) which related to standards requiring diversified pools, including establishment of minimum criteria for pools of qualified loans, provisions to encourage loans to small farms and family farmers, and requirements for congressional review of standards.

Subsec. (d). Pub. L. 104–105, §109(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Subsec. (d)(4) to (7). Pub. L. 104–105, §107(2), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out heading and text of former par. (4). Text read as follows: "Each loan in the pool shall have been sold to the certified facility without recourse to the originator of such loan (other than recourse to any interest of such originator in a reserve established in connection with such loan or any subordinated participation interest of such originator in such loan)."

Subsecs. (e), (f). Pub. L. 104–105, §109(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively. Former subsec. (e) redesignated (c).

Subsec. (g). Pub. L. 104–105, §109(a)(2), redesignated subsec. (g) as (e).

Subsec. (g)(2). Pub. L. 104–105, §107(3), substituted "2279aa(9) of this title" for "2279aa(9)(B) of this title".

1991—Subsec. (g). Pub. L. 102–237 added subsec. (g).

1988—Subsec. (a)(1). Pub. L. 100–399, §601(f), substituted "represents interests solely in, or obligations fully backed by, any pool consisting solely of qualified loans which meet the standards established under

section 2279aa-8 of this title and which are" for "represents interests in, or obligations backed by, any pool of qualified loans".

Subsec. (e). Pub. L. 100-399, §601(g), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "registration requirements (if any) with respect to such securities; and".

Subsec. (f)(1). Pub. L. 100-399, §601(h), substituted "date of the enactment" for "effective date", both of which for purposes of codification were translated as "January 6, 1988,".

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.

§2279aa-7. Repealed. Pub. L. 104-105, title I, §108(b), Feb. 10, 1996, 110 Stat. 164

Section, Pub. L. 92-181, title VIII, §8.7, as added Pub. L. 100-233, title VII, §702, Jan. 6, 1988, 101 Stat. 1698, related to reserves and subordinated participation interests of certified facilities, including provisions relating to cash contributions, retention of subordinated participation interests, additional requirements relating to reserves under former section 2279aa-6(b)(2) of this title, and authority of Board of Directors of Federal Agricultural Mortgage Corporation to establish other policies and procedures.

§2279aa-8. Standards for qualified loans

(a) Standards

(1) In general

The Corporation shall establish underwriting, security appraisal, and repayment standards for qualified loans taking into account the nature, risk profile, and other differences between different categories of qualified loans.

(2) Supervision, examination, and report of condition

The standards shall be subject to the authorities of the Farm Credit Administration under section 2279aa-11 of this title.

(3) Mortgage loans

In establishing standards for qualified loans, the Corporation shall confine corporate operations, so far as practicable, to mortgage loans that are deemed by the Board to be of such quality so as to meet, substantially and generally, the purchase standards imposed by private institutional mortgage investors.

(b) Minimum criteria

To further the purpose of this subchapter to provide a new source of long-term fixed rate financing to assist farmers and ranchers to purchase agricultural real estate, the standards established by the Board pursuant to subsection (a) with respect to loans secured by agricultural real estate shall, at a minimum—

(1) provide that no agricultural mortgage loan with a loan-to-value ratio in excess of 80 percent may be treated as a qualified loan;

(2) require each borrower to demonstrate sufficient cash-flow to adequately service the

agricultural mortgage loan;

(3) contain sufficient documentation standards;

(4) contain adequate standards to protect the integrity of the appraisal process with respect to any agricultural mortgage loans;

(5) contain adequate standards to ensure that the farmer or rancher is or will be actively engaged in agricultural production, and require the borrower to certify to the originator that the borrower intends to continue agricultural production on the farm or ranch involved;

(6) minimize speculation in agricultural real estate for nonagricultural purposes; and

(7) in establishing the value of agricultural real estate, consider the purpose for which the real estate is taxed.

(c) Loan amount limitation

(1) In general

A loan secured by agricultural real estate may not be treated as a qualified loan if the principal amount of such loan exceeds \$2,500,000, adjusted for inflation, except as provided in paragraph (2).

(2) Acreage exception

Paragraph (1) shall not apply with respect to any agricultural mortgage loan described in such paragraph if such loan is secured by agricultural real estate that, in the aggregate, comprises not more than 2,000 acres.

(d) Nondiscrimination requirement

The standards established under subsection (a) shall not discriminate against small originators or small agricultural mortgage loans that are at least \$50,000. The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market.

(Pub. L. 92–181, title VIII, §8.8, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1700; amended Pub. L. 100–399, title VI, §601(i), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 104–105, title I, §110, Feb. 10, 1996, 110 Stat. 165; Pub. L. 110–234, title V, §5406(c), May 22, 2008, 122 Stat. 1158; Pub. L. 110–246, §4(a), title V, §5406(c), June 18, 2008, 122 Stat. 1664, 1920; Pub. L. 115–334, title V, §5410(a), Dec. 20, 2018, 132 Stat. 4678.)

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—Subsec. (c)(2). Pub. L. 115–334 substituted "2,000" for "1,000".

2008—Subsec. (a). Pub. L. 110–246, §5406(c)(1), added pars. (1) and (2), designated last sentence as par. (3) and inserted heading, and struck out former first sentence which read as follows: "Not later than 120 days after the appointment and election of the permanent Board, the Corporation, in consultation with originators, shall establish uniform underwriting, security appraisal, and repayment standards for qualified loans."

Subsec. (b). Pub. L. 110–246, §5406(c)(2)(A), inserted "with respect to loans secured by agricultural real estate" after "subsection (a)" in introductory provisions.

Subsec. (b)(5). Pub. L. 110–246, §5406(c)(2)(B), substituted "ensure that the farmer or rancher" for "ensure that the borrower" and "farm or ranch" for "site".

Subsec. (c)(1). Pub. L. 110–246, §5406(c)(3), inserted "secured by agricultural real estate" after "A loan".

Subsecs. (d), (e). Pub. L. 110–246, §5406(c)(4), (5), redesignated subsec. (e) as (d) and struck out former subsec. (d). Prior to amendment, text read as follows: "No standard prescribed under subsection (a) shall take effect before the later of—

"(1) the end of a period consisting of 30 legislative days and beginning on the date such standards are submitted to the Congress; or

"(2) the end of a period consisting of 90 calendar days and beginning on such date."

1996—Subsec. (e). Pub. L. 104–105 inserted at end "The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market."

1988—Subsec. (a). Pub. L. 100–399 inserted "permanent" after "appointment and election of the".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–334, title V, §5410(b), Dec. 20, 2018, 132 Stat. 4678, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 1 year after the date a report submitted in accordance with section 5414 of this Act [132 Stat. 4724] indicates that it is feasible to increase the acreage limitation in section 8.8(c)(2) of the Farm Credit Act of 1971 [12 U.S.C. 2279aa–8(c)(2)] to 2,000 acres [report submitted June 2019]."

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.

§2279aa–9. Exemption from restructuring and borrowers rights provisions for pooled loans

(a) Restructuring

Notwithstanding any other provision of law, sections 2202, 2202a, 2202b, 2202d, and 2219a of this title shall not apply to any loan included in a pool of qualified loans backing securities or obligations for which the Corporation provides guarantee. The loan servicing standards established by the Corporation shall be patterned after similar standards adopted by other federally sponsored secondary market facilities.

(b) Borrowers rights

At the time of application for a loan (as defined in section 2202a(a)(5) of this title), originators that are Farm Credit System institutions shall give written notice to each applicant of the terms and conditions of the loan, setting forth separately terms and conditions for pooled loans and loans that are not pooled. This notice shall include a statement, if applicable, that the loan may be pooled and that, if pooled, sections 2202, 2202a, 2202b, 2202d, and 2219a of this title shall not apply. This notice also shall inform the applicant that he or she has the right not to have the loan pooled. Within 3 days from the time of commitment, an applicant has the right to refuse to allow the loan to be pooled, thereby retaining rights under sections 2202, 2202a, 2202b, 2202d, and 2219a of this title, if applicable.

(Pub. L. 92–181, title VIII, §8.9, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1701; amended Pub. L. 100–399, title VI, §601(j), Aug. 17, 1988, 102 Stat. 1005; Pub. L. 104–105, title II, §208(b), Feb. 10, 1996, 110 Stat. 174; Pub. L. 115–334, title V, §5411(46), Dec. 20, 2018, 132 Stat. 4685.)

EDITORIAL NOTES

AMENDMENTS

2018—Pub. L. 115–334 struck out "2202c," after "2202b," wherever appearing.

1996—Subsec. (b). Pub. L. 104–105 inserted "(as defined in section 2202a(a)(5) of this title)" after

"application for a loan".

1988—Subsecs. (a), (b). Pub. L. 100–399 substituted "2202d, and 2219a" for "and 2219b" wherever appearing.

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.

§2279aa–10. Funding for guarantee; reserves of Corporation

(a) Guarantee

The Corporation shall provide guarantees for securities representing interests in, or obligations backed by, pools of qualified loans through commitments issued by the Corporation providing for guarantees.

(b) Guarantee fees

(1) Initial fee

At the time a guarantee is issued by the Corporation, the Corporation shall assess the certified facility a fee of not more than $\frac{1}{2}$ of 1 percent of the initial principal amount of each pool of qualified loans.

(2) Annual fees

Beginning in the second year after the date the guarantee is issued under paragraph (1), the Corporation may, at the end of each year, assess the certified facility an annual fee of not more than $\frac{1}{2}$ of 1 percent of the principal amount of the loans then constituting the pool.

(3) Determination of amount

The Corporation shall establish such fees on the amount of risk incurred by the Corporation in providing the guarantees with respect to which such fee is assessed, as determined by the Corporation. Fees assessed under paragraphs (1) and (2) shall be established on an actuarially sound basis.

(4) Review by GAO

The Comptroller General of the United States may review, and submit to the Congress a report regarding, the actuarial soundness and reasonableness of the fees established by the Corporation under this subsection.

(c) Corporation reserve against guarantees losses required

(1) In general

So much of the fees assessed under this section as the Board determines to be necessary shall be set aside by the Corporation in a segregated account as a reserve against losses arising out of the guarantee activities of the Corporation.

(2) Exhaustion of reserve required

The Corporation may not issue obligations to the Secretary of the Treasury under section 2279aa–13 of this title in order to meet the obligations of the Corporation with respect to any guarantees provided under this subchapter until the reserve established under paragraph (1) has been exhausted.

(d) Fees to cover administrative costs authorized

The Corporation may impose charges or fees in reasonable amounts in connection with the administration of its activities under this subchapter to recover its costs for performing such

administration.

(Pub. L. 92-181, title VIII, §8.10, as added Pub. L. 100-233, title VII, §702, Jan. 6, 1988, 101 Stat. 1701; amended Pub. L. 104-316, title I, §106(f), Oct. 19, 1996, 110 Stat. 3831.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (b)(4). Pub. L. 104-316 substituted "Review" for "Annual review" in heading and "may review" for "shall annually review" in text.

§2279aa-11. Supervision, examination, and report of condition

(a) Regulation

(1) Authority

Notwithstanding any other provision of this chapter, the Farm Credit Administration shall have the authority to provide, acting through the Office of Secondary Market Oversight—

(A) for the examination of the Corporation and its affiliates; and

(B) for the general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation and its affiliates by this subchapter, including through the use of the authorities granted to the Farm Credit Administration under—

(i) part C of subchapter V; and

(ii) beginning 6 months after December 13, 1991, section 2252(a)(9) of this title.

(2) Considerations

In exercising its authority pursuant to this section, the Farm Credit Administration shall consider—

(A) the purposes for which the Corporation was created;

(B) the practices appropriate to the conduct of secondary markets in agricultural loans; and

(C) the reduced levels of risk associated with appropriately structured secondary market transactions.

(3) Office of Secondary Market Oversight

(A) Not later than 180 days after December 13, 1991, the Farm Credit Administration Board shall establish within the Farm Credit Administration the Office of Secondary Market Oversight.

(B) The Farm Credit Administration Board shall carry out the authority set forth in this section through the Office of Secondary Market Oversight.

(C) The Office of Secondary Market Oversight shall be managed by a full-time Director who shall be selected by and report to the Farm Credit Administration Board.

(b) Examinations and audits

(1) In general

The financial transactions of the Corporation shall be examined by examiners of the Farm Credit Administration in accordance with the principles and procedures applicable to commercial corporate transactions under such rules and regulations as may be prescribed by the Administration.

(2) Frequency

The examinations shall occur at such times as the Farm Credit Administration Board may determine, but in no event less than once each year.

(3) Access

The examiners shall—

(A) have access to all books, accounts, financial records, reports, files, and all other papers,

things, or property belonging to or in use by the Corporation and necessary to facilitate the audit; and

(B) be afforded full access for verifying transactions with certified facilities and other entities with whom the Corporation conducts transactions.

(c) Annual report of condition

The Corporation shall make and publish an annual report of condition as prescribed by the Farm Credit Administration. Each report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the Farm Credit Administration may by regulation prescribe. The financial statements of the Corporation shall be audited by an independent public accountant.

(d) FCA assessments to cover costs

The Farm Credit Administration shall assess the Corporation for the cost to the Administration of any regulatory activities conducted under this section, including the cost of any examination.

(e) "Affiliate" defined

As used in this subchapter, the term "affiliate" shall mean an entity effectively controlled or owned by the Corporation, except that such term shall not include an originator (as defined in section 2279aa of this title).

(f) Employees and personnel

The Farm Credit Administration Board shall ensure that—

(1) the Office of Secondary Market Oversight has access to a sufficient number of qualified and trained employees to adequately supervise the secondary market activities of the Corporation; and

(2) the supervision of the powers, functions, and duties of the Corporation is performed, to the extent practicable, by personnel who are not responsible for the supervision of the banks and associations of the Farm Credit System.

(Pub. L. 92–181, title VIII, §8.11, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1702; amended Pub. L. 101–624, title XVIII, §1840, Nov. 28, 1990, 104 Stat. 3835; Pub. L. 102–237, title V, §503(a), Dec. 13, 1991, 105 Stat. 1870; Pub. L. 102–552, title III, §308(b)(2), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104–105, title I, §111, Feb. 10, 1996, 110 Stat. 165; Pub. L. 115–334, title V, §5411(47), Dec. 20, 2018, 132 Stat. 4685.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (e). Pub. L. 115–334 substituted "2279aa of this title" for "2279aa(7) of this title".

1996—Subsec. (e). Pub. L. 104–105 substituted "section 2279aa(7) of this title" for "paragraphs (3) and (7), respectively, of section 2279aa of this title" and struck out "a certified facility or" before "an originator".

1992—Subsec. (a)(1)(B)(ii). Pub. L. 102–552 substituted "December 13, 1991" for "the date of enactment of this section".

1991—Subsec. (a)(1). Pub. L. 102–237, §503(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Notwithstanding any other provision of this chapter, the Farm Credit Administration shall have the authority to—

"(A) provide for the examination of the condition of the Corporation and its affiliates; and

"(B) provide for the general supervision of the safe and sound performance of the powers, functions, and duties vested in the Corporation and its affiliates by this subchapter, including through the use of the enforcement powers of the Farm Credit Administration under part C of subchapter V of this chapter."

Subsec. (a)(3). Pub. L. 102–237, §503(a)(2), added par. (3).

Subsec. (f). Pub. L. 102–237, §503(a)(3), added subsec. (f).

1990—Subsec. (a)(1). Pub. L. 101–624, §1840(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Notwithstanding any other provision of this chapter, the regulatory authority of the Farm Credit Administration with respect to the Corporation shall be confined to—

"(A) providing for the examination of the condition of the Corporation; and

"(B) providing for the general supervision of the safe and sound performance of the powers, functions,

and duties vested in the Corporation by this subchapter, including through the use of the enforcement powers of the Farm Credit Administration under part C of subchapter V of this chapter." Subsec. (e). Pub. L. 101-624, §1840(2), added subsec. (e).

§2279aa-12. Securities in credit enhanced pools

(a) Federal laws

(1) Applicability of certain Federal securities laws

For purposes of section 77c(a)(2) of title 15, no security representing an interest in, or obligations backed by, a pool of qualified loans for which guarantees have been provided by the Corporation shall be deemed to be a security issued or guaranteed by a person controlled or supervised by, or acting as an instrumentality of, the Government of the United States. No such security shall be deemed to be a "government security" for purposes of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] or for purposes of the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

(2) No full faith and credit of the United States

Each security for which credit enhancement has been provided by the Corporation shall clearly indicate that the security is not an obligation of, and is not guaranteed as to principal or interest by, the Farm Credit Administration, the United States, or any other agency or instrumentality of the United States (other than the Corporation).

(b) State securities laws

(1) General exemption

Any security or obligation that has been provided a guarantee by the Corporation shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by, or guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States.

(2) State override

The provisions of paragraph (1) shall not be applicable to any State that, during the 8-year period beginning on January 6, 1988, enacts a law that—

- (A) specifically refers to this subsection; and
- (B) expressly provides that paragraph (1) shall not apply to the State.

(c) Authorized investments

(1) In general

Securities representing an interest in, or obligations backed by, pools of qualified loans with respect to which the Corporation has provided a guarantee shall be authorized investments of any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State to the same extent that the person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold, or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality of the United States. Such securities or obligations may be accepted as security for all fiduciary, trust, and public funds, the investment or deposits of which shall be under the authority and control of the United States or any State or any officers of either.

(2) State limitations on purchase, holding, or investment

If State law limits the purchase, holding, or investment in obligations issued by the United States by the person, trust, corporation, partnership, association, business trust, or business entity,

securities or obligations of a certified facility issued on which the Corporation has provided a guarantee shall be considered to be obligations issued by the United States for purposes of the limitation.

(3) Nonapplicability of provisions

(A) Subsequent State law

Paragraphs (1) and (2) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, in any State that, prior to the expiration of the 8-year period beginning on January 6, 1988, enacts a law that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in the securities by any person, trust, corporation, partnership, association, business trust, or business entity, or class thereof, than is provided in paragraphs (1) and (2).

(B) Effect of subsequent State law

The enactment by any State of a law of the type described in subparagraph (A) shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to the effective date of the law and shall not require the sale or other disposition of any securities acquired prior to the effective date of the law.

(d) State usury laws superseded

A provision of the Constitution or law of any State shall not apply to an agricultural loan made by an originator or a certified facility in accordance with this subchapter for sale to the Corporation or to a certified facility for inclusion in a pool for which the Corporation has provided, or has committed to provide, a guarantee, if the loan, not later than 180 days after the date the loan was made, is sold to the Corporation or included in a pool for which the Corporation has provided a guarantee, if the provision—

(1) limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by an agricultural lender or a certified facility; or

(2) limits or prohibits a prepayment penalty (either fixed or declining), yield maintenance, or make-whole payment that may be charged, taken, or received by an agricultural lender or a certified facility in connection with the full or partial payment of the principal amount due on a loan by a borrower in advance of the scheduled date for the payment under the terms of the loan, otherwise known as a prepayment of the loan principal.

(Pub. L. 92–181, title VIII, §8.12, as added Pub. L. 100–233, title VII, §702, Jan. 6, 1988, 101 Stat. 1703; amended Pub. L. 100–399, title VI, §601(k), (l), Aug. 17, 1988, 102 Stat. 1006; Pub. L. 104–105, title I, §112, Feb. 10, 1996, 110 Stat. 165.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–105 added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "Any provision of the constitution or law of any State which expressly limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by agricultural lenders or certified facilities shall not apply to any agricultural loan made by an originator or a certified facility in accordance with this subchapter that is included in a pool for which the Corporation has provided a guarantee."

1988—Subsec. (a)(1). Pub. L. 100–399, §601(k), inserted ", or obligations backed by," before "a pool".

Subsec. (b)(2). Pub. L. 100–399, §601(l), substituted "date of the enactment" for "effective date" both of which for purposes of codification was translated as "January 6, 1988,".

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.

§2279aa–13. Authority to issue obligations to cover guarantee losses of Corporation

(a) Sale of obligations to Treasury

(1) In general

Subject to the limitations contained in section 2279aa–10(c) of this title and the requirement of paragraph (2), the Corporation may issue obligations to the Secretary of the Treasury the proceeds of which may be used by the Corporation solely for the purpose of fulfilling the obligations of the Corporation under any guarantee provided by the Corporation under this subchapter.

(2) Certification

The Secretary of the Treasury may purchase obligations of the Corporation under paragraph (1) only if the Corporation certifies to the Secretary that—

(A) the requirements of section 2279aa–10(c) of this title have been fulfilled; and

(B) the proceeds of the sale of such obligations are needed to fulfill the obligations of the Corporation under any guarantee provided by the Corporation under this subchapter.

(b) Expeditious transaction required

Not later than 10 business days after receipt by the Secretary of the Treasury of any certification by the Corporation under subsection (a)(2), the Secretary of the Treasury shall purchase obligations issued by the Corporation in an amount determined by the Corporation to be sufficient to meet the guarantee liabilities of the Corporation.

(c) Limitation on amount of outstanding obligations

The aggregate amount of obligations issued by the Corporation under subsection (a)(1) which may be held by the Secretary of the Treasury at any time (as determined by the Secretary) shall not exceed \$1,500,000,000.

(d) Terms of obligation

(1) Interest

Each obligation purchased by the Secretary of the Treasury shall bear interest at a rate determined by the Secretary, taking into consideration the average rate on outstanding marketable obligations of the United States as of the last day of the last calendar month ending before the date of the purchase of such obligation.

(2) Redemption

The Secretary of the Treasury shall require that such obligations be repurchased by the Corporation within a reasonable time.

(e) Coordination with title 31

(1) Authority to use proceeds from sale of Treasury securities

For the purpose of purchasing obligations of the Corporation, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale by the Secretary of any securities issued

under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter are extended to include such purchases.

(2) Treatment of transactions

All purchases and sales by the Secretary of the Treasury of obligations issued by the Corporation under this section shall be treated as public debt transactions of the United States.

(f) Authorization of appropriations

There is authorized to be appropriated to the Secretary of the Treasury \$1,500,000,000, without fiscal year limitation, to carry out the purposes of this subchapter.

(Pub. L. 92-181, title VIII, §8.13, as added Pub. L. 100-233, title VII, §702, Jan. 6, 1988, 101 Stat. 1704; amended Pub. L. 104-105, title I, §109(b)(2), Feb. 10, 1996, 110 Stat. 165.)

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-105 substituted "section" for "sections 2279aa-6(b) and" in pars. (1) and (2)(A).

§2279aa-14. Federal jurisdiction

Notwithstanding section 1349 of title 28 or any other provision of law:

(1) The Corporation shall be considered an agency under sections 1345 and 1442 of such title.

(2) All civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States and, to the extent applicable, shall be deemed to be governed by Federal common law. The district courts of the United States shall have original jurisdiction of all such actions, without regard to amount of value.

(3) Any civil or other action, case, or controversy in a court of a State or any court, other than a district court of the United States, to which the Corporation is a party may at any time before trial be removed by the Corporation, without the giving of any bond or security—

(A) to the District Court of the United States for the district and division embracing the place where the same is pending; or

(B) if there is no such district court, to the District Court of the United States for the district in which the principal office of the Corporation is located;

by following any procedure for removal for causes in effect at the time of such removal.

(4) No attachment or execution shall be issued against the Corporation or any of the property of the Corporation before final judgment in any Federal, State, or other court.

(Pub. L. 92-181, title VIII, §8.14, as added Pub. L. 100-233, title VII, §702, Jan. 6, 1988, 101 Stat. 1705.)

**PART B—REGULATION OF FINANCIAL SAFETY AND SOUNDNESS OF
FEDERAL AGRICULTURAL MORTGAGE CORPORATION**

§2279bb. Definitions

For purposes of this part:

(1) Compensation

The term "compensation" means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(2) Core capital

The term "core capital" means, with respect to the Corporation, the sum of the following (as determined in accordance with generally accepted accounting principles):

- (A) The par value of outstanding common stock.
- (B) The par value of outstanding preferred stock.
- (C) Paid-in capital.
- (D) Retained earnings.

(3) Director

The term "Director" means the Director of the Office of Secondary Market Oversight of the Farm Credit Administration, selected under section 2279aa–11(a)(3) of this title.

(4) Office

The term "Office" means the Office of Secondary Market Oversight of the Farm Credit Administration, established in section 2279aa–11(a) of this title.

(5) Regulatory capital

The term "regulatory capital" means, with respect to the Corporation, the core capital of the Corporation plus an allowance for losses and guarantee claims, as determined in accordance with generally accepted accounting principles.

(6) State

The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(Pub. L. 92–181, title VIII, §8.31, as added Pub. L. 102–237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1871.)

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.

§2279bb–1. Risk-based capital levels

(a) Risk-based capital test

The Director of the Office of Secondary Market Oversight shall, by regulation, establish a risk-based capital test under this section for the Corporation. When applied to the Corporation, the risk-based capital test shall determine the amount of regulatory capital for the Corporation that is sufficient for the Corporation to maintain positive capital during a 10-year period in which both of the following circumstances occur:

(1) Credit risk

(A) In general

With respect to securities representing an interest in, or obligations backed by, a pool of qualified loans owned or guaranteed by the Corporation and other obligations of the Corporation, losses on the underlying qualified loans occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing industry practice in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than

2 years (as established by the Director), experienced the highest rates of default and severity of agricultural mortgage losses, in comparison with such rates of default and severity of agricultural mortgage losses in other such areas for any period of such duration, as determined by the Director.

(B) Rural utility loans

With respect to securities representing an interest in, or obligation backed by, a pool of qualified loans described in section 2279aa(7)(C) of this title owned or guaranteed by the Corporation, losses occur at a rate of default and severity reasonably related to risks in electric and telephone facility loans (as applicable), as determined by the Director.

(2) Interest rate risk

Interest rates on Treasury obligations of varying terms increase or decrease over the first 12 months of such 10-year period by not more than the lesser of (A) 50 percent (with respect to the average interest rates on such obligations during the 12-month period preceding the 10-year period), or (B) 600 basis points, and remain at such level for the remainder of the period. This paragraph may not be construed to require the Director to determine interest rate risk under this paragraph based on the interest rates for various long-term and short-term obligations all increasing or all decreasing concurrently.

(b) Considerations

(1) Establishment of test

In establishing the risk-based capital test under subsection (a)—

(A) the Director shall take into account appropriate distinctions based on various types of agricultural mortgage products, varying terms of Treasury obligations, and any other factors the Director considers appropriate;

(B) the Director shall conform loan data used in determining credit risk to the minimum geographic and commodity diversification standards applicable to pools of qualified loans eligible for guarantee;

(C) the Director may take into account retained subordinated participating interests under section 2279aa–6(b)(2) of this title (as in effect before February 10, 1996);

(D) the Director may take into account other methods or tests to determine credit risk developed by the Corporation before December 13, 1991; and

(E) the Director shall consider any other information submitted by the Corporation in writing during the 180-day period beginning on December 13, 1991.

(2) Revising test

Upon the expiration of the 8-year period beginning on December 13, 1991, the Director shall examine the risk-based capital test under subsection (a) and may revise the test. In making examinations and revisions under this paragraph, the Director shall take into account that, before December 13, 1991, the Corporation has not issued guarantees for pools of qualified loans. To the extent that the revision of the risk-based capital test causes a change in the classification of the Corporation within the enforcement levels established under section 2279bb–4 of this title, the Director shall waive the applicability of any additional enforcement actions available because of such change for a reasonable period of time, to permit the Corporation to increase the amount of regulatory capital of the Corporation accordingly.

(c) Risk-based capital level

For purposes of this part, the risk-based capital level for the Corporation shall be equal to the sum of the following amounts:

(1) Credit and interest rate risk

The amount of regulatory capital determined by applying the risk-based capital test under subsection (a) to the Corporation, adjusted to account for foreign exchange risk.

(2) Management and operations risk

To provide for management and operations risk, 30 percent of the amount of regulatory capital determined by applying the risk-based capital test under subsection (a) to the Corporation.

(d) Specified contents

(1) In general

The regulations establishing the risk-based capital test under this section shall—

(A) be issued by the Director for public comment in the form of a notice of proposed rulemaking, to be first published after the expiration of the period referred to in subsection (a); and

(B) contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, prepayment rates, and performance of pools of qualified loans).

(2) Specificity

The regulations referred to in paragraph (1) shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

(e) Availability of model

The Director shall make copies of the statistical model or models used to implement the risk-based capital test under this section available for public acquisition and may charge a reasonable fee for such copies.

(Pub. L. 92–181, title VIII, §8.32, as added Pub. L. 102–237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1871; amended Pub. L. 102–552, title III, §308(b)(3), Oct. 28, 1992, 106 Stat. 4116; Pub. L. 104–105, title I, §§109(b)(3), 113, Feb. 10, 1996, 110 Stat. 165, 166; Pub. L. 110–234, title V, §5406(d), May 22, 2008, 122 Stat. 1159; Pub. L. 110–246, §4(a), title V, §5406(d), June 18, 2008, 122 Stat. 1664, 1920; Pub. L. 115–334, title V, §5411(48), Dec. 20, 2018, 132 Stat. 4685.)

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—Subsec. (a). Pub. L. 115–334, §5411(48)(A), substituted "The" for "Not sooner than the expiration of the 3-year period beginning on February 10, 1996, the" in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 115–334, §5411(48)(B), substituted "section 2279aa(7)(C)" for "section 2279aa(9)(C)".

2008—Subsec. (a)(1). Pub. L. 110–246, §5406(d), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1996—Subsec. (a). Pub. L. 104–105, §113(1), in first sentence, substituted "Not sooner than the expiration of the 3-year period beginning on February 10, 1996," for "Not later than the expiration of the 2-year period beginning on December 13, 1991,".

Subsec. (b)(1)(C). Pub. L. 104–105, §109(b)(3), substituted "Director may" for "Director shall" and inserted before semicolon at end "(as in effect before February 10, 1996)".

Subsec. (b)(2). Pub. L. 104–105, §113(2), substituted "8-year" for "5-year" in first sentence.

Subsec. (d). Pub. L. 104–105, §113(3), designated first sentence of existing provisions as par. (1), inserted heading, added subpar. (A), and designated part of first sentence as subpar. (B), designated second sentence of existing provisions as par. (2), inserted heading, and substituted "The regulations referred to in paragraph (1) shall" for "The regulations shall".

1992—Subsecs. (a), (b)(1)(D). Pub. L. 102–552, §308(b)(3)(A), substituted "December 13, 1991" for "the date of the enactment of this section".

Subsec. (b)(1)(E). Pub. L. 102–552, §308(b)(3)(B), substituted "December 13, 1991" for "the date of the enactment of such Act".

Subsec. (b)(2). Pub. L. 102–552, §308(b)(3)(A), substituted "December 13, 1991" for "the date of the

enactment of this section" in two places.

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.

§2279bb–2. Minimum capital level

(a) In general

Except as provided in subsection (b), for purposes of this part, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of

(1) 2.75 percent of the aggregate on-balance sheet assets of the Corporation, as determined in accordance with generally accepted accounting principles; and

(2) 0.75 percent of the aggregate off-balance sheet obligations of the Corporation, which, for the purposes of this part, shall include

(A) the unpaid principal balance of outstanding securities that are guaranteed by the Corporation and backed by pools of qualified loans;

(B) instruments that are issued or guaranteed by the Corporation and are substantially equivalent to instruments described in subparagraph (A); and

(C) other off-balance sheet obligations of the Corporation.

(b) Transition period

(1) In general

For purposes of this part, the minimum capital level for the Corporation—

(A) prior to January 1, 1997, shall be the amount of core capital equal to the sum of—

(i) 0.45 percent of aggregate off-balance sheet obligations of the Corporation;

(ii) 0.45 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(iii) 2.50 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

(B) during the 1-year period ending December 31, 1997, shall be the amount of core capital equal to the sum of—

(i) 0.55 percent of aggregate off-balance sheet obligations of the Corporation;

(ii) 1.20 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(iii) 2.55 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2);

(C) during the 1-year period ending December 31, 1998, shall be the amount of core capital equal to—

(i) if the Corporation's core capital is not less than \$25,000,000 on January 1, 1998, the sum of—

(I) 0.65 percent of aggregate off-balance sheet obligations of the Corporation;

(II) 1.95 percent of designated on-balance sheet assets of the Corporation, as determined under paragraph (2); and

(III) 2.65 percent of on-balance sheet assets of the Corporation other than assets designated under paragraph (2); or

(ii) if the Corporation's core capital is less than \$25,000,000 on January 1, 1998, the amount determined under subsection (a); and

(D) on and after January 1, 1999, shall be the amount determined under subsection (a).

(2) Designated on-balance sheet assets

For purposes of this subsection, the designated on-balance sheet assets of the Corporation shall be—

(A) the aggregate on-balance sheet assets of the Corporation acquired under section 2279aa-6(d) of this title; and

(B) the aggregate amount of qualified loans purchased and held by the Corporation under section 2279aa-3(c)(13) of this title.

(Pub. L. 92-181, title VIII, §8.33, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1873; amended Pub. L. 104-105, title I, §114, Feb. 10, 1996, 110 Stat. 166; Pub. L. 115-334, title V, §5411(49), Dec. 20, 2018, 132 Stat. 4685.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (b)(2)(A). Pub. L. 115-334 substituted "section 2279aa-6(d)" for "section 2279aa-6(e)".

1996—Pub. L. 104-105 amended section generally, substituting present provisions for provisions relating to minimum capital level, including general provisions, provisions relating to 18-month transition, and provisions relating to linked portfolio assets.

§2279bb-3. Critical capital level

For purposes of this part, the critical capital level for the Corporation shall be an amount of core capital equal to 50 percent of the total minimum capital amount determined under section 2279bb-2 of this title.

(Pub. L. 92-181, title VIII, §8.34, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1874; amended Pub. L. 104-105, title I, §115, Feb. 10, 1996, 110 Stat. 167.)

EDITORIAL NOTES

AMENDMENTS

1996—Pub. L. 104-105 amended section generally. Prior to amendment, section read as follows: "For purposes of this part, the critical capital level for the Corporation shall be an amount of core capital equal to the sum of—

"(1) 1.25 percent of the aggregate on-balance sheet assets of the Corporation (other than assets referred to in paragraph (3)), as determined in accordance with generally accepted accounting principles;

"(2) 0.25 percent of the unpaid principal balance of outstanding securities guaranteed by the Corporation and backed by pools of qualified loans and substantially equivalent instruments issued or guaranteed by the Corporation, and other off-balance sheet obligations of the Corporation; and

"(3) a percentage of any aggregate assets of the Corporation acquired pursuant to the linked portfolio option under section 2279aa-6(g) of this title, which shall be—

"(A) during the 5-year period beginning on December 13, 1991, one-half of the percentage that is determined under section 2279bb-2(c)(1) of this title; and

"(B) after the expiration of such 5-year period, 1.25 percent of any such aggregate assets."

§2279bb-4. Enforcement levels

(a) In general

The Director shall classify the Corporation, for purposes of this part, according to the following

enforcement levels:

(1) Level I

The Corporation shall be classified as within level I if the Corporation—

(A) maintains an amount of regulatory capital that is equal to or exceeds the risk-based capital level established under section 2279bb-1 of this title; and

(B) equals or exceeds the minimum capital level established under section 2279bb-2 of this title.

(2) Level II

The Corporation shall be classified as within level II if—

(A) the Corporation—

(i) maintains an amount of regulatory capital that is less than the risk-based capital level; and

(ii) equals or exceeds the minimum capital level; or

(B) the Corporation is otherwise classified as within level II under subsection (b) of this section.

(3) Level III

The Corporation shall be classified as within level III if—

(A) the Corporation—

(i) does not equal or exceed the minimum capital level; and

(ii) equals or exceeds the critical capital level established under section 2279bb-3 of this title; or

(B) the Corporation is otherwise classified as within level III under subsection (b) of this section.

(4) Level IV

The Corporation shall be classified as within level IV if the Corporation—

(A) does not equal or exceed the critical capital level; or

(B) is otherwise classified as within level IV under subsection (b) of this section.

(b) Discretionary classification

If at any time the Director determines in writing (and provides written notification to the Corporation and the Farm Credit Administration) that the Corporation is taking any action not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages securitized by the Corporation or property underlying securities guaranteed by the Corporation, has decreased significantly, the Director may classify the Corporation—

(1) as within level II, if the Corporation is otherwise within level I;

(2) as within level III, if the Corporation is otherwise within level II; or

(3) as within level IV, if the Corporation is otherwise within level III.

(c) Quarterly determination

The Director shall determine the classification of the Corporation for purposes of this part on not less than a quarterly basis (and as appropriate under subsection (b)). The first such determination shall be made for the quarter ending March 31, 1992.

(d) Notice

Upon determining under subsection (b) or (c) that the Corporation is within level II or III, the Director shall provide written notice to the Congress and to the Corporation—

(1) that the Corporation is within such level;

(2) that the Corporation is subject to the provisions of section 2279bb-5 or 2279bb-6 of this title, as applicable; and

(3) stating the reasons for the classification of the Corporation within such level.

(Pub. L. 92-181, title VIII, §8.35, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1874; amended Pub. L. 104-105, title I, §116, Feb. 10, 1996, 110 Stat. 168; Pub. L. 115-334, title V, §5411(50), Dec. 20, 2018, 132 Stat. 4685.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (e). Pub. L. 115-334 struck out subsec. (e). Text read as follows: "Notwithstanding paragraphs (1) and (2) of subsection (a), during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 2279bb-1 of this title, the Corporation shall be classified as within level I if the Corporation equals or exceeds the minimum capital level established under section 2279bb-2 of this title."

1996—Subsec. (e). Pub. L. 104-105 substituted "during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 2279bb-1 of this title," for "during the 30-month period beginning on December 13, 1991,".

§2279bb-5. Mandatory actions applicable to level II

(a) Capital restoration plan

If the Corporation is classified as within level II, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

(b) Restriction on dividends

If the Corporation is classified as within level II, the Corporation may not make any payment of dividends that would result in the Corporation being reclassified as within level III or IV.

(c) Reclassification from level II to level III

The Director shall immediately reclassify the Corporation as within level III (and the Corporation shall be subject to the provisions of section 2279bb-6 of this title), if—

(1) the Corporation is within level II; and

(2)(A) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(B) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

(d) Effective date

This section shall take effect upon the expiration of the 30-month period beginning on December 13, 1991.

(Pub. L. 92-181, title VIII, §8.36, as added Pub. L. 102-237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1876.)

§2279bb-6. Supervisory actions applicable to level III

(a) Mandatory supervisory actions

(1) Capital restoration plan

If the Corporation is classified as within level III, the Corporation shall, within the time period determined by the Director, submit to the Director a capital restoration plan and, after approval, carry out the plan.

(2) Restrictions on dividends

(A) Prior approval

If the Corporation is classified as within level III, the Corporation—

(i) may not make any payment of dividends that would result in the Corporation being reclassified as within level IV; and

(ii) may make any other payment of dividends only if the Director approves the payment before the payment.

(B) Standard for approval

If the Corporation is classified as within level III, the Director may approve a payment of dividends by the Corporation only if the Director determines that the payment (i) will enhance the ability of the Corporation to meet the risk-based capital level and the minimum capital level promptly, (ii) will contribute to the long-term safety and soundness of the Corporation, or (iii) is otherwise in the public interest.

(3) Reclassification from level III to level IV

The Director shall immediately reclassify the Corporation as within level IV if—

(A) the Corporation is classified as within level III; and

(B)(i) the Corporation does not submit a capital restoration plan that is approved by the Director; or

(ii) the Director determines that the Corporation has failed to make, in good faith, reasonable efforts necessary to comply with such a capital restoration plan and fulfill the schedule for the plan approved by the Director.

(b) Discretionary supervisory actions

In addition to any other actions taken by the Director (including actions under subsection (a)), the Director may, at any time, take any of the following actions if the Corporation is classified as within level III:

(1) Limitation on increase in obligations

Limit any increase in, or order the reduction of, any obligations of the Corporation, including off-balance sheet obligations.

(2) Limitation on growth

Limit or prohibit the growth of the assets of the Corporation or require contraction of the assets of the Corporation.

(3) Prohibition on dividends

Prohibit the Corporation from making any payment of dividends.

(4) Acquisition of new capital

Require the Corporation to acquire new capital in any form and in any amount sufficient to provide for the reclassification of the Corporation as within level II.

(5) Restriction of activities

Require the Corporation to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the Corporation.

(6) Conservatorship

Appoint a conservator for the Corporation consistent with this chapter.

(c) Effective date

This section shall take effect on January 1, 1992.

(Pub. L. 92–181, title VIII, §8.37, as added Pub. L. 102–237, title V, §503(b)(2), Dec. 13, 1991, 105 Stat. 1876.)

§2279bb–7. Repealed. Pub. L. 115–334, title V, §5411(51), Dec. 20, 2018, 132 Stat. 4685

Section, Pub. L. 92–181, title VIII, §8.38, as added Pub. L. 104–105, title I, §117, Feb. 10, 1996, 110 Stat. 168, related to recapitalization of Corporation.

**PART C—RECEIVERSHIP, CONSERVATORSHIP, AND LIQUIDATION OF
FEDERAL AGRICULTURAL MORTGAGE CORPORATION**

§2279cc. Conservatorship; liquidation; receivership

(a) Voluntary liquidation

The Corporation may voluntarily liquidate only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board.

(b) Involuntary liquidation

(1) In general

The Farm Credit Administration Board may appoint a conservator or receiver for the Corporation under the circumstances specified in section 2183(b) of this title.

(2) Application

In applying section 2183(b) of this title to the Corporation under paragraph (1)—

(A) the Corporation shall also be considered insolvent if the Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(B) a conservator may also be appointed for the Corporation if the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; and

(C) a receiver may also be appointed for the Corporation if—

(i)(I) the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

(II) the Corporation is classified under section 2279bb–4 of this title as within level III or IV and the alternative actions available under part B are not satisfactory; and

(ii) the Farm Credit Administration determines that the appointment of a conservator would not be appropriate.

(3) No effect on supervisory actions

The grounds for appointment of a conservator for the Corporation under this subsection shall be in addition to those in section 2279bb–6 of this title.

(c) Appointment of conservator or receiver

(1) Qualifications

Notwithstanding section 2183(b) of this title, if a conservator or receiver is appointed for the Corporation, the conservator or receiver shall be—

(A) the Farm Credit Administration or any other governmental entity or employee, including the Farm Credit System Insurance Corporation; or

(B) any person that—

(i) has no claim against, or financial interest in, the Corporation or other basis for a conflict of interest as the conservator or receiver; and

(ii) has the financial and management expertise necessary to direct the operations and affairs of the Corporation and, if necessary, to liquidate the Corporation.

(2) Compensation

(A) In general

A conservator or receiver for the Corporation and professional personnel (other than a Federal employee) employed to represent or assist the conservator or receiver may be compensated for activities conducted as, or for, a conservator or receiver.

(B) Limit on compensation

Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Farm Credit Administration may provide for compensation at higher rates that are not in excess of rates prevailing in the private sector if the Farm Credit Administration determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(C) Contractual arrangements

The conservator or receiver may contract with any governmental entity, including the Farm Credit System Insurance Corporation, to make personnel, services, and facilities of the entity available to the conservator or receiver on such terms and compensation arrangements as shall be mutually agreed, and each entity may provide the same to the conservator or receiver.

(3) Expenses

A valid claim for expenses of the conservatorship or receivership (including compensation under paragraph (2)) and a valid claim with respect to a loan made under subsection (f) shall—

(A) be paid by the conservator or receiver from funds of the Corporation before any other valid claim against the Corporation; and

(B) may be secured by a lien, on such property of the Corporation as the conservator or receiver may determine, that shall have priority over any other lien.

(4) Liability

If the conservator or receiver for the Corporation is not a Federal entity, or an officer or employee of the Federal Government, the conservator or receiver shall not be personally liable for damages in tort or otherwise for an act or omission performed pursuant to and in the course of the conservatorship or receivership, unless the act or omission constitutes gross negligence or any form of intentional tortious conduct or criminal conduct.

(5) Indemnification

The Farm Credit Administration may allow indemnification of the conservator or receiver from the assets of the conservatorship or receivership on such terms as the Farm Credit Administration considers appropriate.

(d) Judicial review of appointment

(1) In general

Notwithstanding subsection (i)(1), not later than 30 days after a conservator or receiver is appointed under subsection (b), the Corporation may bring an action in the United States District Court for the District of Columbia for an order requiring the Farm Credit Administration Board to remove the conservator or receiver. The court shall, on the merits, dismiss the action or direct the Farm Credit Administration Board to remove the conservator or receiver.

(2) Stay of other actions

On the commencement of an action under paragraph (1), any court having jurisdiction of any other action or enforcement proceeding authorized under this chapter to which the Corporation is a party shall stay the action or proceeding during the pendency of the action for removal of the conservator or receiver.

(e) General powers of conservator or receiver

The conservator or receiver for the Corporation shall have such powers to conduct the conservatorship or receivership as shall be provided pursuant to regulations adopted by the Farm Credit Administration Board. Such powers shall be comparable to the powers available to a

conservator or receiver appointed pursuant to section 2183(b) of this title.

(f) Borrowings for working capital

(1) In general

If the conservator or receiver of the Corporation determines that it is likely that there will be insufficient funds to pay the ongoing administrative expenses of the conservatorship or receivership or that there will be insufficient liquidity to fund maturing obligations of the conservatorship or receivership, the conservator or receiver may borrow funds in such amounts, from such sources, and at such rates of interest as the conservator or receiver considers necessary or appropriate to meet the administrative expenses or liquidity needs of the conservatorship or receivership.

(2) Working capital from Farm Credit banks

A Farm Credit bank may loan funds to the conservator or receiver for a loan authorized under paragraph (1) or, in the event of receivership, a Farm Credit bank may purchase assets of the Corporation.

(g) Agreements against interests of conservator or receiver

No agreement that tends to diminish or defeat the right, title, or interest of the conservator or receiver for the Corporation in any asset acquired by the conservator or receiver as conservator or receiver for the Corporation shall be valid against the conservator or receiver unless the agreement—

(1) is in writing;

(2) is executed by the Corporation and any person claiming an adverse interest under the agreement, including the obligor, contemporaneously with the acquisition of the asset by the Corporation;

(3) is approved by the Board or an appropriate committee of the Board, which approval shall be reflected in the minutes of the Board or committee; and

(4) has been, continuously, from the time of the agreement's execution, an official record of the Corporation.

(h) Report to Congress

On a determination by the receiver for the Corporation that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the financial condition of the receivership.

(i) Termination of authorities

(1) Corporation

The charter of the Corporation shall be canceled, and the authority provided to the Corporation by this subchapter shall terminate, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.

(2) Oversight

The Office of Secondary Market Oversight established under section 2279aa-11 of this title shall be abolished, and section 2279aa-11(a) of this title and part B shall have no force or effect, on such date as the Farm Credit Administration Board determines is appropriate following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.

(Pub. L. 92-181, title VIII, §8.41, as added Pub. L. 104-105, title I, §118, Feb. 10, 1996, 110 Stat. 168.)

CHAPTER 24—FEDERAL FINANCING BANK

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§2281. Congressional findings and declaration of purpose

The Congress finds that demands for funds through Federal and federally assisted borrowing programs are increasing faster than the total supply of credit and that such borrowings are not adequately coordinated with overall Federal fiscal and debt management policies. The purpose of this chapter is to assure coordination of these programs with the overall economic and fiscal policies of the Government, to reduce the cost of Federal and federally assisted borrowings from the public, and to assure that such borrowings are financed in a manner least disruptive of private financial markets and institutions.

(Pub. L. 93–224, §2, Dec. 29, 1973, 87 Stat. 937.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 93–224, §20, Dec. 29, 1973, 87 Stat. 942, provided that: "This Act [enacting this chapter and amending section 24 of this title] becomes effective upon the date of its enactment [Dec. 29, 1973], except that section 7 [section 2286 of this title] becomes effective upon the expiration of thirty days after such date [Dec. 29, 1973]."

SHORT TITLE

Pub. L. 93–224, §1, Dec. 29, 1973, 87 Stat. 937, provided: "That this Act [enacting this chapter and amending section 24 of this title] may be cited as the 'Federal Financing Bank Act of 1973'."

SEPARABILITY

Pub. L. 93–224, §19, Dec. 29, 1973, 87 Stat. 942, provided that: "If any provision of this Act [enacting this chapter and amending section 24 of this title], or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act [this chapter], and the application of such provisions to other persons or circumstances, shall not be affected."

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the

President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 11782

Ex. Ord. No. 11782, May 6, 1974, 39 F.R. 15991, which established the Federal Financing Bank Advisory Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §15, Aug. 17, 1982, 47 F.R. 36099, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

§2282. Definitions

For the purposes of this chapter—

(1) The term "Federal agency" means an executive department, an independent Federal establishment, or a corporation or other entity established by the Congress which is owned in whole or in part by the United States.

(2) The term "obligation" means any note, bond, debenture, or other evidence of indebtedness, but does not include Federal Reserve notes or stock evidencing an ownership interest in the issuing Federal agency.

(3) The term "guarantee" means any guarantee, insurance, or other pledge with respect to the payment of all or part of the principal or interest on any obligation, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions, or any guarantee or pledge arising out of a statutory obligation to insure such deposits, shares, or other withdrawable accounts.

(4) The term "Bank" means the Federal Financing Bank established by section 2283 of this title. (Pub. L. 93-224, §3, Dec. 29, 1973, 87 Stat. 937.)

§2283. Creation of Federal Financing Bank

There is hereby created a body corporate to be known as the Federal Financing Bank, which shall have succession until dissolved by an Act of Congress. The Bank shall be subject to the general supervision and direction of the Secretary of the Treasury. The Bank shall be an instrumentality of the United States Government and shall maintain such offices as may be necessary or appropriate in the conduct of its business.

(Pub. L. 93-224, §4, Dec. 29, 1973, 87 Stat. 937.)

§2284. Board of Directors

(a) The Bank shall have a Board of Directors consisting of five persons, one of whom shall be the Secretary of the Treasury as Chairman of the Board, and four of whom shall be appointed by the President from among the officers or employees of the Bank or of any Federal agency. The Chairman and each other member of the Board may designate some other officer or employee of the Government to serve in his place.

(b) The Board of Directors shall meet at the call of its Chairman. The Board shall determine the general policies which shall govern the operations of the Bank. The Chairman of the Board shall select and effect the appointment of qualified persons to fill such offices as may be provided for in the bylaws, and such persons shall be the executive officers of the Bank and shall discharge such

executive functions, powers, and duties as may be provided for in the bylaws or by the Board of Directors. The members of the Board and their designees shall not receive compensation for their services on the Board.

(Pub. L. 93–224, §5, Dec. 29, 1973, 87 Stat. 937.)

§2285. Functions

(a) Purchase and sale of obligations issued, sold, or guaranteed by Federal agencies

The Bank is authorized to make commitments to purchase and sell, and to purchase and sell on terms and conditions determined by the Bank, any obligation which is issued, sold, or guaranteed by a Federal agency. Any Federal agency which is authorized to issue, sell, or guarantee any obligation is authorized to issue or sell such obligations directly to the Bank.

(b) Yield

Any purchase by the Bank shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration (1) the current average yield on outstanding marketable obligations of the United States of comparable maturity, or (2) whenever the Bank's own obligations outstanding are sufficient, the current average yield on outstanding obligations of the Bank of comparable maturity.

(c) Fees

The Bank is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves.

(Pub. L. 93–224, §6, Dec. 29, 1973, 87 Stat. 938.)

§2285a. Acquisition of obligations involving loan guarantees for New York City

Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire any obligation the payment of interest or principal of which has at any time been guaranteed in whole or in part under title I of the New York City Loan Guarantee Act of 1978.

(Pub. L. 95–339, title II, §201(b), Aug. 8, 1978, 92 Stat. 467.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title I of the New York City Loan Guarantee Act of 1978, referred to in text, is title I of Pub. L. 95–339, Aug. 8, 1978, 92 Stat. 460, which was classified generally to subchapter II (§1521 et seq.) of chapter 27 of former Title 31, and was omitted from the Code in the general revision and reenactment of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877.

CODIFICATION

Section was enacted as part of the New York City Loan Guarantee Act of 1978, and not as part of the Federal Financing Bank Act of 1973 which comprises this chapter.

§2286. Approval of financing plans by Secretary of the Treasury

(a) Method, source, timing, terms, and conditions of sale of obligations issued or sold by Federal agencies

To insure the orderly and coordinated marketing of Treasury and Federal agency obligations and appropriate financing planning with respect thereto, and to facilitate the effective financing of programs authorized by law subject to the applicable provisions of such law, the prior approval of

the Secretary of the Treasury shall be required with respect to—

- (1) the method of financing,
- (2) the source of financing,
- (3) the timing of financing in relation to market conditions and financing by other Federal agencies, and
- (4) the financing terms and conditions, including rates of interest and maturities,

of obligations issued or sold by any Federal agency; except that the approval of the Secretary of the Treasury shall not be required with respect to (A) obligations issued or sold pursuant to an Act of Congress which expressly prohibits any guarantee of such obligations by the United States, and (B) obligations issued or sold by the Farmers Home Administration.

(b) Grant or denial of approval by Secretary

Upon receipt of a request from a Federal agency for his approval under subsection (a) of this section, the Secretary of the Treasury shall act promptly either to grant his approval or to advise the agency of the reasons for withholding his approval. In no case shall the Secretary of the Treasury withhold such approval for a period longer than sixty days unless, prior to the end of such period, he submits to the Congress a detailed explanation of his reasons for so doing. In no case shall the Secretary withhold such approval for a period longer than one hundred and twenty days. To the maximum extent practicable, withholdings of approval shall be made in a manner which is not disproportionately detrimental to the functioning of any particular type of Federal program. Expedited treatment shall be accorded in any case in which the Federal agency advises the Secretary of the Treasury that unusual circumstances require such treatment.

(c) Time and form for submission of financing plans

Federal agencies subject to this section shall submit financing plans to the Secretary of the Treasury at such times and in such forms as he shall prescribe.

(Pub. L. 93-224, §7, Dec. 29, 1973, 87 Stat. 938.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on expiration of 30 days after Dec. 29, 1973, see section 20 of Pub. L. 93-224, set out as a note under section 2281 of this title.

§2287. Initial capital

The Secretary of the Treasury is authorized to advance the funds necessary to provide initial capital to the Bank. Each such advance shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. Interest payments on such advances may be deferred, at the discretion of the Secretary, but any such deferred payments shall themselves bear interest at the rate specified in this section. There is authorized to be appropriated not to exceed \$100,000,000, which shall be available for the purposes of this section without fiscal year limitation.

(Pub. L. 93-224, §8, Dec. 29, 1973, 87 Stat. 939.)

§2288. Bank obligations

(a) Maximum amount of obligations issued publicly and outstanding at any one time

The Bank is authorized, with the approval of the Secretary of the Treasury, to issue publicly and have outstanding at any one time not in excess of \$15,000,000,000, or such additional amounts as

may be authorized in appropriations Acts, of obligations having such maturities and bearing such rate or rates of interest as may be determined by the Bank. Such obligations may be redeemable at the option of the Bank before maturity in such manner as may be stipulated therein. So far as is feasible, the debt structure of the Bank shall be commensurate with its asset structure.

(b) Purchase and sale of obligations of Federal Financing Bank by Secretary of the Treasury as public debt transactions

The Bank is also authorized to issue its obligations to the Secretary of the Treasury and the Secretary of the Treasury may in his discretion purchase or agree to purchase any such obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All purchases and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

(c) Authority of Federal Financing Bank to require Secretary of the Treasury to purchase obligations of the Bank

The Bank may require the Secretary of the Treasury to purchase obligations of the Bank issued pursuant to subsection (b) in such amounts as will not cause the holding by the Secretary of the Treasury resulting from such required purchases to exceed \$5,000,000,000 at any one time. This subsection shall not be construed as limiting the authority of the Secretary to purchase obligations of the Bank in excess of such amount.

(d) Bank obligations as lawful investments

Obligations of the Bank issued pursuant to this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or any agency or instrumentality of any of the foregoing, or any officer or officers thereof.

(Pub. L. 93-224, §9, Dec. 29, 1973, 87 Stat. 939.)

EDITORIAL NOTES

CODIFICATION

In subsec. (b), "chapter 31 of title 31" substituted for "the Second Liberty Bond Act" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§2289. General powers

The Bank shall have power—

- (1) to sue and be sued, complain, and defend, in its corporate name;
- (2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;
- (3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;
- (4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any State without regard to any qualification or similar statute in any State;
- (5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and

with any property, real, personal, or mixed, or any interest therein, wherever situated;

(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Bank;

(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

(8) to appoint such officers, attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined, subject to the civil service and classification laws, to require bonds for them and pay the premium thereof;

(9) to enter into contracts, to execute instruments to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business;

(10) to act through any corporate or other agency or instrumentality of the United States, and to utilize the services thereof on a reimbursable basis, and any such agency or instrumentality is authorized to provide services as requested by the Bank; and

(11) to determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations.

(Pub. L. 93-224, §10, Dec. 29, 1973, 87 Stat. 940.)

§2290. Exemptions

(a) Federal, State, and local taxes

The Bank, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (1) any real property and any tangible personal property of the Bank shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (2) any obligations issued by the Bank shall be subject to Federal taxation to the same extent as the obligations of private corporations are taxed.

(b) Exempt securities

All obligations issued by the Bank pursuant to this chapter shall be deemed to be exempted securities within the meaning of sections 77c(a)(2), 77ddd(a)(4), and 78c(a)(12) of title 15.

(c) Budget status of Federal agencies; restrictions

Nothing herein shall affect the budget status of the Federal agencies selling obligations to the Bank under section 2285(a) of this title, or the method of budget accounting for their transactions. The receipts and disbursements of the Bank in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States.

(Pub. L. 93-224, §11, Dec. 29, 1973, 87 Stat. 940.)

§2291. Preparation of obligations

In order to furnish obligations for delivery by the Bank, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Bank may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Bank. The engraved plates, dies, bed pieces, and other material executed in connection therewith, shall remain in the custody of the Secretary of the Treasury. The Bank shall reimburse the Secretary of the Treasury for any expenditures made in preparation, custody, and delivery of such obligations.

(Pub. L. 93-224, §12, Dec. 29, 1973, 87 Stat. 941.)

§2292. Annual report to the President and Congress

The Bank shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities.

(Pub. L. 93-224, §13, Dec. 29, 1973, 87 Stat. 941.)

§2293. Budget and audit provisions of Government corporation control law applicable

The budget and audit provisions of chapter 91 of title 31 shall be applicable to the Federal Financing Bank in the same manner as they are applied to the wholly owned Government corporations named in section 9101(3) of title 31.

(Pub. L. 93-224, §15, Dec. 29, 1973, 87 Stat. 941.)

EDITORIAL NOTES

CODIFICATION

"Chapter 91 of title 31" and "section 9101(3) of title 31" substituted in text for "the Government Corporation Control Act (31 U.S.C. 841 et seq.)" and "section 101 of such Act (31 U.S.C. 846)", respectively, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§2294. Payments on behalf of public bodies

(a) Notwithstanding any other provision of this chapter, the purchase by the Bank of the obligations of any local public body or agency within the United States shall be made upon such terms and conditions as may be necessary to avoid an increase in borrowing costs to such local public body or agency as a result of the purchase by the Bank of its obligations. The head of the Federal agency guaranteeing such obligations, in consultation with the Secretary of the Treasury, shall estimate the borrowing costs that would be incurred by the local public body or agency if its obligations were not sold to the Bank.

(b) The Federal agency guaranteeing obligations purchased by the Bank may contract to make periodic payments to the Bank which shall be sufficient to offset the costs to the Bank of purchasing obligations of local public bodies or agencies upon terms and conditions as prescribed in this section rather than as prescribed by section 2285 of this title. Such contracts may be made in advance of appropriations therefor, and appropriations for making payments under such contracts are hereby authorized.

(Pub. L. 93-224, §16, Dec. 29, 1973, 87 Stat. 941.)

§2294a. Contracts for periodic payments to offset costs of purchase of obligations of local public housing agencies

In addition to any authority provided before October 1, 1981, the Secretary of Housing and Urban Development may, on and after October 1, 1981, enter into contracts for periodic payments to the Federal Financing Bank to offset the costs to the Bank of purchasing obligations (as described in the first sentence of section 2294(b) of this title) issued by local public housing agencies for purposes of financing public housing projects authorized by section 1437c(c) of title 42. Notwithstanding any other provision of law, such contracts may be entered into only to the extent approved in appropriation Acts, and the aggregate amount which may be obligated over the duration of such contracts may not exceed \$400,000,000. There are hereby authorized to be appropriated any amounts

necessary to provide for such payments. The authority to enter into contracts under this subsection shall be in lieu of any authority (except for authority provided specifically to the Secretary before October 1, 1981) of the Secretary to enter into contracts for such purposes under section 2294(b) of this title.

(Pub. L. 97–35, title III, §329E, Aug. 13, 1981, 95 Stat. 410.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Housing and Community Development Amendments of 1981 and also as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the Federal Financing Bank Act of 1973 which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as a note under section 3701 of this title.

§2295. Authority or responsibility under other provisions of law not to be affected or impaired

Nothing in this chapter shall be construed as impairing any authority or responsibility of the President or the Secretary of the Treasury under any other provision of law, nor shall anything in this chapter affect in any manner any provision of law concerning the right of any Federal agency to sell obligations to the Secretary of the Treasury or the authority or responsibility of the Secretary of the Treasury to purchase such obligations.

(Pub. L. 93–224, §17, Dec. 29, 1973, 87 Stat. 942.)

§2296. Increase not authorized in amounts of obligations issued, sold, or guaranteed by Federal agencies

Nothing in this chapter shall be construed as authorizing an increase in the amounts of obligations issued, sold, or guaranteed by any Federal agency which issues, sells, or guarantees obligations purchased by the Bank.

(Pub. L. 93–224, §18, Dec. 29, 1973, 87 Stat. 942.)

CHAPTER 25—NATIONAL COMMISSION ON ELECTRONIC FUND TRANSFERS

Sec.

- 2401. Establishment of Commission.
- 2402. Membership of Commission.
- 2403. Functions of Commission.
- 2404. Powers of Commission.
- 2405. Executive Director and additional staff personnel; appointment and compensation; experts and consultants; employment and compensation; audits by Comptroller General.
- 2406. Compensation of members of Commission.
- 2407. Cooperation and assistance of other Federal departments, agencies, and

instrumentalities.
2408. Authorization of appropriations.

§2401. Establishment of Commission

There is established the National Commission on Electronic Fund Transfers (hereinafter referred to as the "Commission") which shall be an independent instrumentality of the United States.

(Pub. L. 93-495, title II, §201, Oct. 28, 1974, 88 Stat. 1508.)

§2402. Membership of Commission

(a) Composition

The Commission shall be composed of twenty-six members as follows:

- (1) the Chairman of the Board of Governors of the Federal Reserve System or his delegate;
- (2) the Attorney General or his delegate;
- (3) the Comptroller of the Currency or his delegate;
- (4) the Chairman of the Federal Home Loan Bank Board or his delegate;
- (5) the Administrator of the National Credit Union Administration or his delegate;
- (6) the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation or his delegate;
- (7) the Chairman of the Federal Communications Commission or his delegate;
- (8) the Postmaster General or his delegate;
- (9) the Secretary of the Treasury or his delegate;
- (10) the Chairman of the Federal Trade Commission or his delegate;
- (11) two individuals, appointed by the President, one of whom is an official of a State agency which regulates banking, or similar financial institutions, and one of whom is an official of a State agency which regulates thrift or similar financial institutions;
- (12) seven individuals, appointed by the President, who are officers or employees of, or who otherwise represent banking, thrift, or other business entities, including one representative each of commercial banks, mutual savings banks, savings and loan associations, credit unions, retailers, nonbanking institutions offering credit card services, and organizations providing interchange services for credit cards issued by banks;
- (13) five individuals, appointed by the President, from private life who are not affiliated with, do not represent and have no substantial interest in any banking, thrift, or other financial institution, including but not limited to credit unions, retailers, and insurance companies;
- (14) the Comptroller General of the United States or his delegate; and
- (15) the Director of the Office of Technology Assessment.

(b) Designation of Chairperson

The Chairperson shall be designated by the President at the time of his appointment from among the members of the Commission and such selection shall be by and with the advice and consent of the Senate unless the appointee holds an office to which he was appointed by and with the advice and consent of the Senate.

(c) Vacancies

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(Pub. L. 93-495, title II, §202, Oct. 28, 1974, 88 Stat. 1508.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in

National Credit Union Administration Board pursuant to section 1752a of this title.

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of this title.

§2403. Functions of Commission

(a) Study, investigation, and recommendations; considerations

The Commission shall conduct a thorough study and investigation and recommend appropriate administrative action and legislation necessary in connection with the possible development of public or private electronic fund transfer systems, taking into account, among other things—

- (1) the need to preserve competition among the financial institutions and other business enterprises using such a system;
- (2) the need to promote competition among financial institutions and to assure Government regulation and involvement or participation in a system competitive with the private sector be kept to a minimum;
- (3) the need to prevent unfair or discriminatory practices by any financial institution or business enterprise using or desiring to use such a system;
- (4) the need to afford maximum user and consumer convenience;
- (5) the need to afford maximum user and consumer rights to privacy and confidentiality;
- (6) the impact of such a system on economic and monetary policy;
- (7) the implications of such a system on the availability of credit;
- (8) the implications of such a system expanding internationally and into other forms of electronic communications; and
- (9) the need to protect the legal rights of users and consumers.

(b) Interim and final reports; submission dates; transmittal of final report to President and Congress; contents; availability to public; termination date of Commission

The Commission shall make an interim report within one year of the date of the confirmation by the Senate of the Chairperson or the appointment by the President of an acting Chairperson and at such other times as it deems advisable and shall transmit to the President and to the Congress not later than two years after the date of the confirmation by the Senate of the Chairperson or the appointment by the President of an acting Chairperson, a final report of its findings and recommendations. Any such report shall include all hearing transcripts, staff studies, and other material used in preparation of the report. The interim and final reports shall be made available to the public upon transmittal. Sixty days after transmission of its final report the Commission shall cease to exist.

(c) Clearance by Federal agencies prior to transmittal of interim or final report

The Commission shall not be required to obtain the clearance of any Federal agency prior to the transmittal of any interim or final report.

(Pub. L. 93-495, title II, §203, Oct. 28, 1974, 88 Stat. 1508; Pub. L. 94-200, title II, §201, Dec. 31, 1975, 89 Stat. 1124.)

EDITORIAL NOTES

AMENDMENTS

1975—Subsec. (b). Pub. L. 94-200 changed the time for submission of interim and final reports from one year of the Commission's findings and recommendations and two years after Oct. 28, 1974, to one year and two years respectively after the confirmation by the Senate of the Chairperson or the appointment by the President of an acting Chairperson.

§2404. Powers of Commission

(a) Hearings; administration of oaths

The Commission may for the purpose of carrying out this chapter hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable. The Commission may administer oaths of ¹ affirmations to witnesses appearing before it.

(b) Implementation authority of members or agents of Commission

When so authorized by the Commission, any member or agent of the Commission may take any action which the Commission is authorized to take by this section.

(c) Request for information from other Federal departments or agencies

The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) Issuance of subpoenas for attendance of witnesses and production of evidence; refusal to obey; contempt proceedings; manner of service of subpoenas; service of process

(1) The Commission shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission. Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(2) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

(Pub. L. 93-495, title II, §204, Oct. 28, 1974, 88 Stat. 1509.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original "this Act", meaning Pub. L. 93-495, which enacted this chapter (§2401 et seq.). For complete classification of this Act to the Code, see Tables.

¹ *So in original. Probably should be "or".*

§2405. Executive Director and additional staff personnel; appointment and compensation; experts and consultants; employment and compensation; audits by Comptroller General

(a) The Commission—

(1) may appoint with the advice and consent of the Senate and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General

Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(2) may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, but at rates not to exceed \$150 a day for individuals.

(b) The Comptroller General is authorized to make detailed audits of the books and records of the Commission, and shall report the results of any such audit to the Commission and to the Congress.

(Pub. L. 93-495, title II, §205, Oct. 28, 1974, 88 Stat. 1510.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§2406. Compensation of members of Commission

(a) A member of the Commission who is an officer or employee of the United States shall serve as a member of the Commission without additional compensation, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties as a member of the Commission.

(b) A member of the Commission who is not otherwise an officer or employee of the United States shall be compensated at a rate of \$150 per day when engaged in the performance of his duties as a member of the Commission, and shall also be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of his duties as a member of the Commission.

(Pub. L. 93-495, title II, §206, Oct. 28, 1974, 88 Stat. 1510.)

§2407. Cooperation and assistance of other Federal departments, agencies, and instrumentalities

(a) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request, such data, reports, and other information as the Commission deems necessary to carry out its functions under this chapter.

(b) The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Commission may request to assist it in carrying out its functions.

(Pub. L. 93-495, title II, §207, Oct. 28, 1974, 88 Stat. 1510.)

§2408. Authorization of appropriations

There are authorized to be appropriated without fiscal year limitations such sums, not to exceed \$2,000,000, as may be necessary to carry out the provisions of this chapter.

(Pub. L. 93-495, title II, §208, Oct. 28, 1974, 88 Stat. 1511.)

CHAPTER 26—DISPOSITION OF ABANDONED MONEY ORDERS AND

TRAVELER'S CHECKS

Sec.

- 2501. Congressional findings and declaration of purpose.
- 2502. Definitions.
- 2503. State entitlement to escheat or custody.

§2501. Congressional findings and declaration of purpose

The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

(Pub. L. 93-495, title VI, §601, Oct. 28, 1974, 88 Stat. 1525.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

APPLICABILITY TO SUMS PAYABLE ON MONEY ORDERS, ETC., DEEMED ABANDONED ON OR AFTER FEBRUARY 1, 1965; EXCEPTION

Pub. L. 93-495, title VI, §604, Oct. 28, 1974, 88 Stat. 1526, provided that: "This title [enacting this chapter] shall be applicable to sums payable on money orders, traveler's checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974."

§2502. Definitions

As used in this chapter—

(1) "banking organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States;

(2) "business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and

(3) "financial organization" means any savings and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

(Pub. L. 93-495, title VI, §602, Oct. 28, 1974, 88 Stat. 1525.)

§2503. State entitlement to escheat or custody

Where any sum is payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was

purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum;

(2) if the books and records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or

(3) if the books and records of such banking or financial organizations or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

(Pub. L. 93-495, title VI, §603, Oct. 28, 1974, 88 Stat. 1525.)

CHAPTER 27—REAL ESTATE SETTLEMENT PROCEDURES

Sec.

- 2601. Congressional findings and purpose.
- 2602. Definitions.
- 2603. Uniform settlement statement.
- 2604. Home buying information booklets.
- 2605. Servicing of mortgage loans and administration of escrow accounts.
- 2606. Exempted transactions.
- 2607. Prohibition against kickbacks and unearned fees.
- 2608. Title companies; liability of seller.
- 2609. Limitation on requirement of advance deposits in escrow accounts.
- 2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements.
- 2611 to 2613. Repealed.
- 2614. Jurisdiction of courts; limitations.
- 2615. Contracts and liens; validity.
- 2616. State laws unaffected; inconsistent Federal and State provisions.
- 2617. Authority of Bureau.

§2601. Congressional findings and purpose

(a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs submitted their joint report to the Congress on "Mortgage Settlement Costs" and that the time has come for the recommendations for Federal legislative action made in that report to be implemented.

(b) It is the purpose of this chapter to effect certain changes in the settlement process for residential real estate that will result—

- (1) in more effective advance disclosure to home buyers and sellers of settlement costs;
- (2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;
- (3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and
- (4) in significant reform and modernization of local recordkeeping of land title information.

(Pub. L. 93–533, §2, Dec. 22, 1974, 88 Stat. 1724.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, known as the Real Estate Settlement Procedures Act of 1974, which is classified principally to this chapter (§2601 et seq.). For complete classification of this Act to the Code, see Short Title note below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE

Pub. L. 93–533, §20, formerly §19, Dec. 22, 1974, 88 Stat. 1731, renumbered §20, Pub. L. 94–205, §10, Jan. 2, 1976, 89 Stat. 1159, provided that: "The provisions of this Act, and the amendments made thereby [see Short Title note below], shall become effective one hundred and eighty days after the date of the enactment of this Act [Dec. 22, 1974]."

SHORT TITLE OF 2021 AMENDMENT

Pub. L. 116–342, §1, Jan. 13, 2021, 134 Stat. 5134, provided that: "This Act [amending section 2603 of this title and section 1604 of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 2603 of this title] may be cited as the 'Building Up Independent Lives and Dreams Act' or the 'BUILD Act'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–205, §1, Jan. 2, 1976, 89 Stat. 1157, provided: "That this Act [enacting section 2617 of this title, amending sections 2602, 2603, 2604, 2607, 2609 and 2616 of this title and section 1631 of Title 15, Commerce and Trade, repealing sections 2605 and 2606 of this title, enacting provisions set out as a note under section 2602 of this title and amending provisions set out as a note under this section] may be cited as the 'Real Estate Settlement Procedures Act Amendments of 1975'."

SHORT TITLE

Pub. L. 93–533, §1, Dec. 22, 1974, 88 Stat. 1724, provided that: "This Act [enacting this chapter and sections 1730f and 1831b of this title and provisions set out as notes under this section and section 1730f of this title] may be cited as the 'Real Estate Settlement Procedures Act of 1974'."

SIMPLIFICATION AND UNIFICATION OF DISCLOSURES REQUIRED UNDER RESPA AND TILA FOR MORTGAGE TRANSACTIONS

Pub. L. 104–208, div. A, title II, §2101, Sept. 30, 1996, 110 Stat. 3009–398, provided that:

"(a) IN GENERAL.—With respect to credit transactions which are subject to the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Truth in Lending Act [15 U.S.C. 1601 et seq.], the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') and the

Secretary of Housing and Urban Development (hereafter in this section referred to as the 'Secretary') shall take such action as may be necessary before the end of the 6-month period beginning on the date of enactment of this Act [Sept. 30, 1996]—

"(1) to simplify and improve the disclosures applicable to such transactions under such Acts, including the timing of the disclosures; and

"(2) to provide a single format for such disclosures which will satisfy the requirements of each such Act with respect to such transactions.

"(b) REGULATIONS.—To the extent that it is necessary to prescribe any regulation in order to effect any changes required to be made under subsection (a), the proposed regulation shall be published in the Federal Register before the end of the 6-month period referred to in subsection (a).

"(c) RECOMMENDATIONS FOR LEGISLATION.—If the Board and the Secretary find that legislative action may be necessary or appropriate in order to simplify and unify the disclosure requirements under the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and the Truth in Lending Act [15 U.S.C. 1601 et seq.], the Board and the Secretary shall submit a report containing recommendations to the Congress concerning such action."

§2602. Definitions

For purposes of this chapter—

(1) the term "federally related mortgage loan" includes any loan (other than temporary financing such as a construction loan) which—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government, or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 1602(f) ¹ of title 15, who makes or invests in residential real estate loans aggregating more than \$1,000,000 per year, except that for the purpose of this chapter, the term "creditor" does not include any agency or instrumentality of any State;

(2) the term "thing of value" includes any payment, advance, funds, loan, service, or other consideration;

(3) the term "Settlement services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement;

(4) the term "title company" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term "person" includes individuals, corporations, associations, partnerships, and trusts;

(6) the term "Secretary" means the Secretary of Housing and Urban Development;

(7) the term "affiliated business arrangement" means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider;

(8) the term "associate" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business; and

(9) the term "Bureau" means the Bureau of Consumer Financial Protection.

(Pub. L. 93–533, §3, Dec. 22, 1974, 88 Stat. 1724; Pub. L. 94–205, §2, Jan. 2, 1976, 89 Stat. 1157; Pub. L. 98–181, title I [title IV, §461(a)], Nov. 30, 1983, 97 Stat. 1230; Pub. L. 102–550, title IX, §908(a), (b), Oct. 28, 1992, 106 Stat. 3873, 3874; Pub. L. 104–208, div. A, title II, §2103(c)(1), Sept. 30, 1996, 110 Stat. 3009–400; Pub. L. 111–203, title X, §1098(1), July 21, 2010, 124 Stat. 2103.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1602(f) of title 15, referred to in par. (1)(B)(iv), was redesignated section 1602(g) of title 15 by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Par. (9). Pub. L. 111–203 added par. (9).

1996—Par. (7). Pub. L. 104–208 substituted "affiliated business arrangement" for "controlled business arrangement".

1992—Par. (1)(A). Pub. L. 102–550, §908(b), inserted "or subordinate" after "first" and ", including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property" after "families".

Par. (3). Pub. L. 102–550, §908(a), inserted "the origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans)," after "broker,".

1983—Pars. (7), (8). Pub. L. 98–181 added pars. (7) and (8).

1976—Par. (1). Pub. L. 94–205, §2(1), inserted "(other than temporary financing such as a construction loan)" in introductory text.

Par. (1)(A). Pub. L. 94–205, §2(2), inserted "a first lien on" after "is secured by".

Par. (1)(B)(iii). Pub. L. 94–205, §2(3)–(5), substituted "is intended to be sold by the originating lender to" for "is eligible for purchase by" and "a" and "is to" for "from any" and "could", respectively, and struck out "or" after "the Government National Mortgage Association".

Par. (1)(B)(iv). Pub. L. 94–205, §2(6), inserted ", except that for the purpose of this chapter, the term 'creditor' does not include any agency or instrumentality of any State" after "more than \$1,000,000 per year".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102–550, title IX, §908(d), Oct. 28, 1992, 106 Stat. 3874, provided that: "This section [amending this section and enacting provisions set out below] shall take effect on the date of enactment of this Act [Oct.

28, 1992] and shall not apply retroactively."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98–181, title I [title IV, §461(f)], Nov. 30, 1983, 97 Stat. 1232, provided that: "The amendments made by this section [amending this section and sections 2607, 2614, and 2617 of this title] shall become effective on January 1, 1984."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–205, §12, Jan. 2, 1976, 89 Stat. 1160, provided that: "The provisions of this Act and the amendments made hereby [enacting section 2617 of this title, amending this section, sections 2603, 2604, 2607, 2609, and 2616 of this title, and section 1631 of Title 15, Commerce and Trade, repealing sections 2605 and 2606 of this title, and enacting and amending provisions set out as notes under section 2601 of this title] shall become effective upon enactment [Jan. 2, 1976]. The Secretary may suspend for up to one hundred and eighty days from the date of enactment of this Act [Jan. 2, 1976] any provision of section 4 and section 5 of the Real Estate Settlement Procedures Act of 1974 [sections 2603 and 2604 of this title], as amended by this Act."

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

REGULATIONS

Pub. L. 102–550, title IX, §908(c), Oct. 28, 1992, 106 Stat. 3874, provided that: "The Secretary of Housing and Urban Development shall issue regulations to implement the amendments made by this section [amending this section] not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992]. The regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section)."

¹ [*See References in Text note below.*](#)

§2603. Uniform settlement statement

(a) Disclosure for mortgage loan transactions

The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 2604 of this title, in conjunction with the disclosure requirements of the Truth in Lending Act [15 U.S.C. 1601 et seq.] that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this chapter ¹ and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. Such forms shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The Bureau may, by regulation, permit the deletion from the forms prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the Bureau be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard forms which relates to the borrower's transaction be furnished to the seller, or to require that that part of the standard forms which relates to the seller be furnished to the borrower.

(b) Availability for inspection; exceptions

The forms prescribed under this section shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that (1) the

Bureau may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and (2) the borrower may, in accordance with regulations of the Bureau, waive his right to have the forms made available at such time. Upon the request of the borrower to inspect the forms prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.

(c) Disclosure of fees

The standard form described in subsection (a) may include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 3350(11) of this title), a clear disclosure of—

- (1) the fee paid directly to the appraiser by such company; and
- (2) the administration fee charged by such company.

(d) Disclosure for charitable mortgage loan transactions

With respect to a mortgage loan transaction involving a residential mortgage loan offered at 0 percent interest with only bonafide and reasonable fees and that is primarily for charitable purposes, an organization described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title may use forms HUD-1 and GFE (as defined under section 1024.2(b) of title 12, Code of Federal Regulations) together with a disclosure substantially in the form of the Loan Model Form H-2 (as depicted in Appendix H to part 1026 of title 12, Code of Federal Regulations), collectively, in lieu of the disclosure published under subsection (a) of this section.

(Pub. L. 93-533, §4, Dec. 22, 1974, 88 Stat. 1725; Pub. L. 94-205, §3, Jan. 2, 1976, 89 Stat. 1157; Pub. L. 104-208, div. A, title II, §2103(g)(1), Sept. 30, 1996, 110 Stat. 3009-401; Pub. L. 111-203, title X, §1098(2), title XIV, §1475, July 21, 2010, 124 Stat. 2103, 2200; Pub. L. 116-342, §2(b), Jan. 13, 2021, 134 Stat. 5134.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsec. (a), is title I of Pub. L. 90-321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

This chapter, referred to in subsec. (a), was in the original "this title" and was translated as reading "this Act", meaning Pub. L. 93-533, which is classified principally to this chapter, to reflect the probable intent of Congress, because Pub. L. 93-533 does not contain titles.

AMENDMENTS

2021—Subsec. (d). Pub. L. 116-342 added subsec. (d).

2010—Subsec. (a). Pub. L. 111-203, §1098(2), substituted "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 2604 of this title, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this chapter and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." for "The Secretary, in consultation with the Administrator of Veteran's Affairs, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such variations as may be necessary to reflect differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans.", "Such forms" for "Such form", "Bureau may" for "Secretary may", "the forms" for "the form", and "prescribed by the Bureau" for "prescribed by the Secretary" and substituted "standard forms" for "standard form" in two places.

Subsec. (b). Pub. L. 111–203, §1098(2)(B), (C), substituted "forms" for "form" wherever appearing and "Bureau" for "Secretary" in two places.

Subsec. (c). Pub. L. 111–203, §1475, added subsec. (c).

1996—Subsec. (a). Pub. L. 104–208 substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board".

1976—Subsec. (a). Pub. L. 94–205, §3(1)–(3), designated existing provisions as subsec. (a), struck out "minimum" after "with such" and "unavoidable" after "necessary to reflect" in parenthetical provisions covering allowable regional variations in the uniform settlement statement, and substituted provisions authorizing the Secretary to permit deletions from the standard form for provisions requiring that the standard form contain all the information and data required under the Truth in Lending Act.

Subsec. (b). Pub. L. 94–205, §3(4), added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 116–342, §2(c), Jan. 13, 2021, 134 Stat. 5135, provided that: "The amendments made by subsections (a) and (b) [amending this section and section 1604 of Title 15, Commerce and Trade] shall take effect on the date of the enactment of this Act [Jan. 13, 2021]."

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1098(2) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1475 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, with the Secretary authorized to suspend for up to 180 days from Jan. 2, 1976, any provision of this section as amended by Pub. L. 94–205, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

¹ [*See References in Text note below.*](#)

§2604. Home buying information booklets

(a) Preparation and distribution

The Director of the Bureau of Consumer Financial Protection (hereafter in this section referred to as the "Director") shall prepare, at least once every 5 years, a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The Director shall prepare the booklet in various languages and cultural styles, as the Director determines to be appropriate, so that the booklet is understandable and accessible to homebuyers of different ethnic and cultural backgrounds. The Director shall distribute such booklets to all lenders that make federally related mortgage loans. The Director shall also distribute to such lenders lists, organized by location, of homeownership counselors certified under section 1701x(e) of this title for use in complying with the requirement under subsection (c) of this section.

(b) Contents

Each booklet shall be in such form and detail as the Director shall prescribe and, in addition to such other information as the Director may provide, shall include in plain and understandable

language the following information:

(1) A description and explanation of the nature and purpose of the costs incident to a real estate settlement or a federally related mortgage loan. The description and explanation shall provide general information about the mortgage process as well as specific information concerning, at a minimum—

- (A) balloon payments;
- (B) prepayment penalties;
- (C) the advantages of prepayment; and
- (D) the trade-off between closing costs and the interest rate over the life of the loan.

(2) An explanation and sample of the uniform settlement statement required by section 2603 of this title.

(3) A list and explanation of lending practices, including those prohibited by the Truth in Lending Act or other applicable Federal law, and of other unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

(4) A list and explanation of questions a consumer obtaining a federally related mortgage loan should ask regarding the loan, including whether the consumer will have the ability to repay the loan, whether the consumer sufficiently shopped for the loan, whether the loan terms include prepayment penalties or balloon payments, and whether the loan will benefit the borrower.

(5) An explanation of the right of rescission as to certain transactions provided by sections 125 and 129 of the Truth in Lending Act [15 U.S.C. 1635, 1639].

(6) A brief explanation of the nature of a variable rate mortgage and a reference to the booklet entitled "Consumer Handbook on Adjustable Rate Mortgages", published by the Director, or to any suitable substitute of such booklet that the Director may subsequently adopt pursuant to such section.

(7) A brief explanation of the nature of a home equity line of credit and a reference to the pamphlet required to be provided under section 127A of the Truth in Lending Act [15 U.S.C. 1637a].

(8) Information about homeownership counseling services made available pursuant to section 1701x(a)(4) of this title, a recommendation that the consumer use such services, and notification that a list of certified providers of homeownership counseling in the area, and their contact information, is available.

(9) An explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate and the requirements under section 2609 of this title regarding such accounts.

(10) An explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incidental to a real estate settlement.

(11) An explanation of a consumer's responsibilities, liabilities, and obligations in a mortgage transaction.

(12) An explanation of the nature and purpose of real estate appraisals, including the difference between an appraisal and a home inspection.

(13) Notice that the Office of Housing of the Department of Housing and Urban Development has made publicly available a brochure regarding loan fraud and a World Wide Web address and toll-free telephone number for obtaining the brochure.

(14) An explanation of flood insurance and the availability of flood insurance under the National Flood Insurance Program or from a private insurance company, whether or not the real estate is located in an area having special flood hazards, and the following statement: "Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose to not maintain flood insurance on a structure, and it floods, you are responsible for all flood losses relating to that structure."

The booklet prepared pursuant to this section shall take into consideration differences in real estate settlement procedures that may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Estimate of charges

Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau. Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 1701x(e) of this title and located in the area of the lender.

(d) Distribution by lenders to loan applicants at time of receipt or preparation of applications

Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. The lender shall provide the booklet in the version that is most appropriate for the person receiving it. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

(e) Printing and distribution by lenders of booklets approved by Bureau

Booklets may be printed and distributed by lenders if their form and content are approved by the Bureau as meeting the requirements of subsection (b) of this section.

(Pub. L. 93–533, §5, Dec. 22, 1974, 88 Stat. 1725; Pub. L. 94–205, §4, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 102–550, title IX, §951, Oct. 28, 1992, 106 Stat. 3892; Pub. L. 111–203, title X, §1098(3), title XIV, §1450, July 21, 2010, 124 Stat. 2104, 2174; Pub. L. 112–141, div. F, title II, §100222, July 6, 2012, 126 Stat. 934; Pub. L. 113–89, §13(b), Mar. 21, 2014, 128 Stat. 1026.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this title" and was translated as reading "this Act", meaning Pub. L. 93–533, which is classified principally to this chapter, to reflect the probable intent of Congress, because Pub. L. 93–533 does not contain titles.

The Truth in Lending Act, referred to in subsec. (b)(3), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. Two sections 129 of the Act have been enacted and are classified to sections 1639 and 1639a of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2014—Subsec. (b)(14). Pub. L. 113–89 inserted before period at end ", and the following statement: 'Although you may not be required to maintain flood insurance on all structures, you may still wish to do so, and your mortgage lender may still require you to do so to protect the collateral securing the mortgage. If you choose to not maintain flood insurance on a structure, and it floods, you are responsible for all flood losses relating to that structure.' " and transferred par. (14) to appear after par. (13).

2012—Subsec. (b)(14). Pub. L. 112–141 added par. (14) at end of subsec. (b).

2010—Pub. L. 111–203, §1450(1), substituted "Home buying" for "Special" in section catchline.

Pub. L. 111–203, §1098(3)(A), substituted "Bureau" for "Secretary" wherever appearing.

Subsec. (a). Pub. L. 111–203, §1450(2), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this chapter, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services. The Bureau shall distribute such booklets to all lenders which make federally related mortgage loans."

Pub. L. 111–203, §1098(3)(B), substituted "The Bureau shall prepare and distribute booklets jointly

addressing compliance with the requirements of the Truth in Lending Act and the provisions of this chapter, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services." for "The Secretary shall prepare and distribute booklets to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services."

Subsec. (b). Pub. L. 111–203, §1450(2), added subsec. (b) and struck out former subsec. (b) which related to form and detail, cost elements, standard settlement form, escrow accounts, selection of persons for settlement services; and consideration of differences in settlement procedures.

Subsec. (c). Pub. L. 111–203, §1450(3), inserted at end "Each lender shall also include with the booklet a reasonably complete or updated list of homeownership counselors who are certified pursuant to section 1701x(e) of this title and located in the area of the lender."

Subsec. (d). Pub. L. 111–203, §1450(4), inserted "The lender shall provide the booklet in the version that is most appropriate for the person receiving it." after the first sentence.

1992—Subsec. (d). Pub. L. 102–550 substituted "Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period." for "Such booklet shall be provided at the time of receipt or preparation of such application."

1976—Subsecs. (c) to (e). Pub. L. 94–205 added subsec. (c), redesignated former subsec. (c) as (d), substituted "or for whom it prepares a written application" for "an application" and inserted "or preparation" after "receipt", and redesignated former subsec. (d) as (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1098(3) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1450 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, with the Secretary authorized to suspend for up to 180 days from Jan. 2, 1976, any provision of this section as amended by Pub. L. 94–205, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

§2605. Servicing of mortgage loans and administration of escrow accounts

(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing

Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) Notice by transferor of loan servicing at time of transfer

(1) Notice requirement

Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice

(A) In general

Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

- (i) termination of the contract for servicing the loan for cause;
- (ii) commencement of proceedings for bankruptcy of the servicer; or
- (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

The notice required under paragraph (1) shall include the following information:

- (A) The effective date of transfer of the servicing described in such paragraph.
- (B) The name, address, and toll-free or collect call telephone number of the transferee servicer.
- (C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.
- (D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.
- (E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.
- (F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.
- (G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee of loan servicing at time of transfer

(1) Notice requirement

Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice

(A) In general

Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception for certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days

after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

- (i) termination of the contract for servicing the loan for cause;
- (ii) commencement of proceedings for bankruptcy of the servicer; or
- (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

Any notice required under paragraph (1) shall include the information described in subsection (b)(3).

(d) Treatment of loan payments during transfer period

During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) Duty of loan servicer to respond to borrower inquiries

(1) Notice of receipt of inquiry

(A) In general

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that—

- (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry

Not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

- (i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and
- (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

- (i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and
- (ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) Protection of credit rating

During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 1681a of title 15).

(4) Limited extension of response time

The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.

(f) Damages and costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals

In the case of any action by an individual, an amount equal to the sum of—

- (A) any actual damages to the borrower as a result of the failure; and
- (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.

(2) Class actions

In the case of a class action, an amount equal to the sum of—

- (A) any actual damages to each of the borrowers in the class as a result of the failure; and
- (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$2,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of—
 - (i) \$1,000,000; or
 - (ii) 1 percent of the net worth of the servicer.

(3) Costs

In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) Nonliability

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of

the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) Administration of escrow accounts

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due. Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.

(h) Preemption of conflicting State laws

Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

(i) Definitions

For purposes of this section:

(1) Effective date of transfer

The term "effective date of transfer" means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(2) Servicer

The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include—

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 1823(c) of this title or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) Servicing

The term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(j) Transition

(1) Originator liability

A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan

made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) Servicer liability

A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

(3) Regulations and effective date

The Bureau shall establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

(k) Servicer prohibitions

(1) In general

A servicer of a federally related mortgage shall not—

(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance;

(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter.

(2) Force-placed insurance defined

For purposes of this subsection and subsections (l) and (m), the term "force-placed insurance" means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

(l) Requirements for force-placed insurance

A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

(1) Written notices to borrower

A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each

clause of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(2) Sufficiency of demonstration

A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

(3) Termination of force-placed insurance

Within 15 days of the receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer shall—

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.

(4) Clarification with respect to Flood Disaster Protection Act

No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 4012a(e) of title 42.

(m) Limitations on force-placed insurance charges

All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.

(Pub. L. 93–533, §6, as added Pub. L. 101–625, title IX, §941, Nov. 28, 1990, 104 Stat. 4405; amended Pub. L. 102–27, title III, §312(a), Apr. 10, 1991, 105 Stat. 154; Pub. L. 103–325, title III, §345, Sept. 23, 1994, 108 Stat. 2239; Pub. L. 104–208, div. A, title II, §2103(a), Sept. 30, 1996, 110 Stat. 3009–399; Pub. L. 111–203, title X, §1098(4), title XIV, §1463, July 21, 2010, 124 Stat. 2104, 2182.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2605, Pub. L. 93–533, §6, Dec. 22, 1974, 88 Stat. 1726, related to advanced itemized disclosure of settlement costs by the lender and liability of the lender for failure to comply, prior to repeal by Pub. L. 94–205, §5, Jan. 2, 1976, 89 Stat. 1158.

AMENDMENTS

2010—Subsec. (e)(1)(A). Pub. L. 111–203, §1463(c)(1), substituted "5 days" for "20 days".

Subsec. (e)(2). Pub. L. 111–203, §1463(c)(2), substituted "30 days" for "60 days" in introductory provisions.

Subsec. (e)(4). Pub. L. 111–203, §1463(c)(3), added par. (4).

Subsec. (f)(1)(B), (2)(B). Pub. L. 111–203, §1463(b)(1), substituted "\$2,000" for "\$1,000".

Subsec. (f)(2)(B)(i). Pub. L. 111–203, §1463(b)(2), substituted "\$1,000,000" for "\$500,000".

Subsec. (g). Pub. L. 111–203, §1463(d), inserted at end "Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender."

Subsec. (j)(3). Pub. L. 111–203, §1098(4), substituted "Bureau" for "Secretary" and struck out ", by regulations that shall take effect not later than April 20, 1991," before "establish".

Subsecs. (k) to (m). Pub. L. 111–203, §1463(a), added subsecs. (k) to (m).

1996—Subsec. (a). Pub. L. 104–208 amended heading and text of subsec. (a) generally. Prior to

amendment, text consisted of pars. (1) to (3) relating to requirements for lenders of federally related mortgage loans to disclose to applicants whether servicing of such loan may be assigned, sold, or transferred, directed Secretary to develop model disclosure statement, and required signature of applicant on all such disclosure statements.

1994—Subsec. (a)(1)(B). Pub. L. 103–325 substituted "(B) at the choice of the person making a federally related mortgage loan—

"(i) for each of the most recent"

for "(B) for each of the most recent", redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and realigned margins, substituted "or" for "and" at end of subcl. (II), and added cl. (ii).

1991—Subsec. (j). Pub. L. 102–27 added subsec. (j).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1098(4) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Amendment by section 1463 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§2606. Exempted transactions

(a) In general

This chapter does not apply to credit transactions involving extensions of credit—

- (1) primarily for business, commercial, or agricultural purposes; or
- (2) to government or governmental agencies or instrumentalities.

(b) Interpretation

In prescribing regulations under section 2617(a) of this title, the Bureau shall ensure that, with respect to subsection (a) of this section, the exemption for credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, as provided in subsection (a)(1) ¹ of this section shall be the same as the exemption for such credit transactions under section 1603(1) of title 15.

(Pub. L. 93–533, §7, as added Pub. L. 103–325, title III, §312, Sept. 23, 1994, 108 Stat. 2221; amended Pub. L. 104–208, div. A, title II, §2103(b), Sept. 30, 1996, 110 Stat. 3009–399; Pub. L. 111–203, title X, §1098(5), July 21, 2010, 124 Stat. 2104.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subsection (a)(1) of this section, referred to in subsec. (b), was in the original "section 7(1) of the Real Estate Settlement Procedures Act of 1974", and was translated as referring to section 7(a)(1) of that Act to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 2606, Pub. L. 93–533, §7, Dec. 22, 1974, 88 Stat. 1727, related to seller or his agent confirming that information concerning an existing residence was disclosed to buyer in writing before a commitment for a mortgage loan was made, prior to repeal by Pub. L. 94–205, §6, Jan. 2, 1976, 89 Stat. 1158.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Secretary".

1996—Pub. L. 104–208 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

¹ [*See References in Text note below.*](#)

§2607. Prohibition against kickbacks and unearned fees

(a) Business referrals

No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) Splitting charges

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Fees, salaries, compensation, or other payments

Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) affiliated business arrangements so long as (A) a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred (i) in the case of a face-to-face referral or a referral made in writing or by electronic media, at or before the time of the referral (and compliance with this requirement in such case may be evidenced by a notation in a written, electronic, or similar system of records maintained in the regular course of business); (ii) in the case of a referral made by telephone, within 3 business days after the referral by telephone,¹ (and in such case an abbreviated verbal disclosure of the existence of the arrangement and the fact that a written disclosure will be provided within 3 business days shall be made to the person being referred during the telephone referral); or (iii) in the case of a referral by a lender (including a referral by a lender to an affiliated lender), at the time the estimates required under section 2604(c) of this title are provided (notwithstanding clause (i) or (ii)); and any required written receipt of such disclosure (without regard to the manner of the disclosure under clause (i), (ii), or (iii)) may be obtained at the closing or settlement (except that a person making a face-to-face referral who provides the written disclosure at or before the time of the referral shall attempt to obtain any required written receipt of such disclosure at such time and if the person being referred chooses not to acknowledge the receipt of the disclosure at that time, that fact shall be noted in the written, electronic, or similar system of records maintained in the regular course of business by the person making the referral), (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Bureau, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation,

the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d) Penalties for violations; joint and several liability; treble damages; actions for injunction by Bureau and Secretary and by State officials; costs and attorney fees; construction of State laws

(1) Any person or persons who violate the provisions of this section shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(2) Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service.

(3) No person or persons shall be liable for a violation of the provisions of subsection (c)(4)(A) if such person or persons proves by a preponderance of the evidence that such violation was not intentional and resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.].

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys fees.

(6) No provision of State law or regulation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with this section.

(Pub. L. 93–533, §8, Dec. 22, 1974, 88 Stat. 1727; Pub. L. 94–205, §7, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 98–181, title I [title IV, §461(b), (c)], Nov. 30, 1983, 97 Stat. 1231; Pub. L. 100–242, title V, §570(g), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 102–54, §13(d)(4), June 13, 1991, 105 Stat. 275; Pub. L. 104–208, div. A, title II, §2103(c)(2), (d), Sept. 30, 1996, 110 Stat. 3009–400; Pub. L. 111–203, title X, §1098(6), (7), July 21, 2010, 124 Stat. 2104.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (d)(4), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

AMENDMENTS

2010—Subsec. (c)(5). Pub. L. 111–203, §1098(6), which directed substituting "Bureau" for "Secretary", was executed by making the substitution for "Secretary" the first time appearing, to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 111–203, §1098(7)(A), inserted "Bureau and" before "Secretary" in heading that had been supplied editorially.

Subsec. (d)(4). Pub. L. 111–203, §1098(7)(B), added par. (4) and struck out former par. (4) which read as follows: "The Secretary, the Attorney General of any State, or the insurance commissioner of any State may

bring an action to enjoin violations of this section."

1996—Subsec. (c)(4). Pub. L. 104–208, §2103(c)(2), substituted "affiliated business arrangements" for "controlled business arrangements".

Subsec. (c)(4)(A). Pub. L. 104–208, §2103(d), amended subcl. (A) generally. Prior to amendment, subcl. (A) read as follows: "at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 2604(c) of this title are provided,".

Subsec. (d)(6). Pub. L. 104–208, §2103(c)(2), substituted "affiliated business arrangements" for "controlled business arrangements".

1991—Subsec. (c)(5). Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1988—Subsec. (c)(5). Pub. L. 100–242 substituted "clause (4)(B)" for "clause 4(B)".

1983—Subsec. (c). Pub. L. 98–181, §461(b), redesignated cl. (4) as (5), added cl. (4) and provisions following cl. (5), as so redesignated, relating to arrangements which shall not be considered a violation of cl. (4)(B).

Subsec. (d)(2). Pub. L. 98–181, §461(c), substituted provisions setting forth the liability of persons violating the prohibitions or limitations of this section for provisions setting forth liability, in addition to penalties provided in par. (1), of persons violating subsecs. (a) and (b) of this section, plus costs and attorney's fees.

Subsec. (d)(3) to (6). Pub. L. 98–181, §461(c), added pars. (3) to (6).

1976—Subsec. (c). Pub. L. 94–205 added cls. (3) and (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98–181, set out as a note under section 2602 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

¹ *So in original.*

§2608. Title companies; liability of seller

(a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

(Pub. L. 93–533, §9, Dec. 22, 1974, 88 Stat. 1728.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93-533, set out as a note under section 2601 of this title.

§2609. Limitation on requirement of advance deposits in escrow accounts

(a) In general

A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower—

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; or

(2) to deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period: *Provided, however,* That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

(b) Notification of shortage in escrow account

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in section 2605(i) of this title) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.

(c) Escrow account statements

(1) Initial statement

(A) In general

Any servicer that has established an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established a statement clearly itemizing the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the first 12 months after the establishment of the account and the anticipated dates of such payments.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower at closing with respect to the property for which the mortgage loan is made or not later than the expiration

of the 45-day period beginning on the date of the establishment of the escrow account.

(C) Initial statement at closing

Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 2603 of this title. The Bureau shall issue regulations prescribing any changes necessary to the uniform settlement statement under section 2603 of this title that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

(2) Annual statement

(A) In general

Any servicer that has established or continued an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established or continued a statement clearly itemizing, for each period described in subparagraph (B) (during which the servicer services the escrow account), the amount of the borrower's current monthly payment, the portion of the monthly payment being placed in the escrow account, the total amount paid into the escrow account during the period, the total amount paid out of the escrow account during the period for taxes, insurance premiums, and other charges (as separately identified), and the balance in the escrow account at the conclusion of the period.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower not less than once for each 12-month period, the first such period beginning on the first January 1st that occurs after November 28, 1990, and shall be submitted not more than 30 days after the conclusion of each such 1-year period.

(d) Penalties

(1) In general

In the case of each failure to submit a statement to a borrower as required under subsection (c), the Secretary shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of \$50 for each such failure, but the total amount imposed on such lender or escrow servicer for all such failures during any 12-month period referred to in subsection (b) ¹ may not exceed \$100,000.

(2) Intentional violations

If any failure to which paragraph (1) applies is due to intentional disregard of the requirement to submit the statement, then, with respect to such failure—

(A) the penalty imposed under paragraph (1) shall be \$100; and

(B) in the case of any penalty determined under subparagraph (A), the \$100,000 limitation under paragraph (1) shall not apply.

(Pub. L. 93–533, §10, Dec. 22, 1974, 88 Stat. 1728; Pub. L. 94–205, §8, Jan. 2, 1976, 89 Stat. 1158; Pub. L. 101–625, title IX, §942(a), Nov. 28, 1990, 104 Stat. 4411; Pub. L. 104–208, div. A, title II, §2103(g)(2), Sept. 30, 1996, 110 Stat. 3009–401; Pub. L. 111–203, title X, §1098(8), July 21, 2010, 124 Stat. 2104.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (c)(1)(C). Pub. L. 111–203, which directed amendment of "section 10(c) (12 U.S.C. 2609(c) and (d))" by substituting "Bureau" for "Secretary", was executed by making the substitution only in subsec. (c) as directed.

1996—Subsec. (c)(1)(C). Pub. L. 104–208 substituted "The Secretary" for "Not later than the expiration of

the 90-day period beginning on November 28, 1990, the Secretary" in second sentence.

1990—Pub. L. 101–625 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) to (d).

1976—Pub. L. 94–205 provided that in addition to amounts required for the payment of taxes, insurance premiums, and other charges due at settlement, the buyer could not be required at settlement to place into an escrow account more than one-sixth of the estimated total amount of such taxes, insurance premiums, and other charges payable within a twelve month period beginning on the date of settlement, but the buyer could be required to make monthly payments into an escrow account sufficient to maintain a surplus of one-sixth of the estimated total amount payable in the coming twelve month period.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

¹ So in original. Probably should be subsection "(c)".

§2610. Prohibition of fees for preparation of truth-in-lending, uniform settlement, and escrow account statements

No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), or by a servicer (as the term is defined under section 2605(i) of this title), for or on account of the preparation and submission by such lender or servicer of the statement or statements required (in connection with such loan) by sections 2603 and 2609(c) of this title or by the Truth in Lending Act [15 U.S.C. 1601 et seq.].

(Pub. L. 93–533, §12, Dec. 22, 1974, 88 Stat. 1729; Pub. L. 101–625, title IX, §942(b), Nov. 28, 1990, 104 Stat. 4412.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in text, is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

1990—Pub. L. 101–625 substituted present section catchline for "Fee for preparation of truth-in-lending and uniform settlement statements", inserted after first comma "or by a servicer (as the term is defined under section 2605(i) of this title),", and substituted "lender or servicer" for second reference to "lender" and "2609(c)" for "2605".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

§§2611 to 2613. Repealed. Pub. L. 104–208, div. A, title II, §2103(h), Sept. 30, 1996, 110 Stat. 3009–401

Section 2611, Pub. L. 93–533, §13, Dec. 22, 1974, 88 Stat. 1730, related to establishment of land parcel recordation system on demonstration basis.

Section 2612, Pub. L. 93–533, §14, Dec. 22, 1974, 88 Stat. 1730, directed Secretary of Housing and Urban Development to report on necessity for further legislation involving real estate settlements.

Section 2613, Pub. L. 93–533, §15, Dec. 22, 1974, 88 Stat. 1730, directed Secretary of Housing and Urban Development to determine, and report to Congress on, feasibility of including statements of settlement costs in special information booklets.

§2614. Jurisdiction of courts; limitations

Any action pursuant to the provisions of section 2605, 2607, or 2608 of this title may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 2605 of this title and 1 year in the case of a violation of section 2607 or 2608 of this title from the date of the occurrence of the violation, except that actions brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

(Pub. L. 93–533, §16, Dec. 22, 1974, 88 Stat. 1731; Pub. L. 98–181, title I [title IV, §461(d)], Nov. 30, 1983, 97 Stat. 1232; Pub. L. 104–208, div. A, title II, §2103(e), Sept. 30, 1996, 110 Stat. 3009–400; Pub. L. 111–203, title X, §1098(9), July 21, 2010, 124 Stat. 2104.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 inserted "the Bureau," before "the Secretary".

1996—Pub. L. 104–208 substituted "section 2605, 2607, or 2608 of this title" for "section 2607 or 2608 of this title" and "within 3 years in the case of a violation of section 2605 of this title and 1 year in the case of a violation of section 2607 or 2608 of this title" for "within one year".

1983—Pub. L. 98–181 amended section generally, striking out a reference to section 2605 of this title, and inserting provision allowing action in district where violation is alleged to have occurred, and provision relating to time limitations in actions brought by the Secretary, the Attorney General of any State, or the insurance commissioner of any State.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98–181, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

§2615. Contracts and liens; validity

Nothing in this chapter shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

(Pub. L. 93–533, §17, Dec. 22, 1974, 88 Stat. 1731.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

§2616. State laws unaffected; inconsistent Federal and State provisions

This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this chapter if the Bureau determines that such law gives greater protection to the consumer. In making these determinations the Bureau shall consult with the appropriate Federal agencies.

(Pub. L. 93–533, §18, Dec. 22, 1974, 88 Stat. 1731; Pub. L. 94–205, §9, Jan. 2, 1976, 89 Stat. 1159; Pub. L. 111–203, title X, §1098(10), July 21, 2010, 124 Stat. 2104.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Secretary" wherever appearing.

1976—Pub. L. 94–205 struck out "(a)" before "This chapter" and struck out subsec. (b) which provided for Federal protection against liability for acts done or omitted in good faith in accordance with the rules, regulations, or interpretations issued by the Secretary. See section 2617 (b) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

§2617. Authority of Bureau

(a) Issuance of regulations; exemptions

The Bureau is authorized to prescribe such rules and regulations, to make such interpretations, and

to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this chapter.

(b) Liability for acts done in good faith in conformity with rule, regulation, or interpretation

No provision of this chapter or the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c) Investigations; hearings; failure to obey order; contempt

(1) The Secretary ¹ may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this chapter, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the Bureau is authorized to hold such hearings, administer such oaths, and require by subpoena the attendance and testimony of such witnesses and production of such documents as the Bureau deems advisable.

(2) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena of the Bureau issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Delay of effectiveness of recent final regulation relating to payments to employees

(1) In general

The amendment to part 3500 of title 24 of the Code of Federal Regulations contained in the final regulation prescribed by the Secretary and published in the Federal Register on June 7, 1996, which will, as of the effective date of such amendment—

(A) eliminate the exemption for payments by an employer to employees of such employer for referral activities which is currently codified as section 3500.14(g)(1)(vii) of such title 24; and

(B) replace such exemption with a more limited exemption in new clauses (vii), (viii), and (ix) of section 3500.14 of such title 24,

shall not take effect before July 31, 1997.

(2) Continuation of prior rule

The regulation codified as section 3500.14(g)(1)(vii) of title 24 of the Code of Federal Regulations, relating to employer-employee payments, as in effect on May 1, 1996, shall remain in effect until the date the amendment referred to in paragraph (1) takes effect in accordance with such paragraph.

(3) Public notice of effective date

The Secretary shall provide public notice of the date on which the amendment referred to in paragraph (1) will take effect in accordance with such paragraph not less than 90 days and not more than 180 days before such effective date.

(Pub. L. 93–533, §19, as added Pub. L. 94–205, §10, Jan. 2, 1976, 89 Stat. 1159; amended Pub. L. 98–181, title I [title IV, §461(e)], Nov. 30, 1983, 97 Stat. 1232; Pub. L. 104–208, div. A, title II, §2103(f), Sept. 30, 1996, 110 Stat. 3009–401; Pub. L. 111–203, title X, §1098(11), July 21, 2010, 124 Stat. 2104.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203, §1098(11)(A), substituted "Bureau" for "Secretary" in section catchline. Subsec. (a). Pub. L. 111–203, §1098(11)(B), substituted "Bureau" for "Secretary".

Subsecs. (b), (c). Pub. L. 111–203, §1098(11)(C), substituted "the Bureau" for "the Secretary" wherever appearing.

1996—Subsec. (d). Pub. L. 104–208 added subsec. (d).

1983—Subsec. (c). Pub. L. 98–181 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–181 effective Jan. 1, 1984, see section 461(f) of Pub. L. 98–181, set out as a note under section 2602 of this title.

EFFECTIVE DATE

Section effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as an Effective Date of 1976 Amendment note under section 2602 of this title.

¹ *Probably should be "The Bureau".*

CHAPTER 28—EMERGENCY MORTGAGE RELIEF

Sec.

- 2701. Congressional findings and declaration of purpose.
- 2702. Mortgages eligible for assistance.
- 2703. Manner of assistance and repayment.
- 2704. Insurance for emergency mortgage loans and advances.
- 2705. Emergency mortgage relief payments.
- 2706. Emergency Homeowners' Relief Fund.
- 2707. Authority of Secretary.
- 2708. Expiration date.
- 2709, 2710. Repealed.
- 2711. Nonapplicability of other laws.
- 2712. Repealed.

§2701. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the Nation is in a severe recession and that the sharp downturn in economic activity has driven large numbers of workers into unemployment and has reduced the incomes of many others;

(2) as a result of these adverse economic conditions the capacity of many homeowners to continue to make mortgage payments has deteriorated and may further deteriorate in the months ahead, leading to the possibility of widespread mortgage foreclosures and distress sales of homes; and

(3) many of these homeowners could retain their homes with temporary financial assistance until economic conditions improve.

(b) It is the purpose of this chapter to provide a standby authority which will prevent widespread mortgage foreclosures and distress sales of homes resulting from the temporary loss of employment and income through a program of emergency loans and advances and emergency mortgage relief payments to homeowners to defray mortgage expenses.

(Pub. L. 94–50, title I, §102, July 2, 1975, 89 Stat. 249.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 94–50, §1, July 2, 1975, 89 Stat. 249, provided: "That this Act [enacting this chapter, amending sections 1723e and 1735b of this title and sections 1452 and 4106 of Title 42, The Public Health and Welfare, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1723e of this title] may be cited as the 'Emergency Housing Act of 1975'."

Pub. L. 94–50, title I, §101, July 2, 1975, 89 Stat. 249, provided that: "This title [enacting this chapter] may be cited as the 'Emergency Homeowners' Relief Act'."

§2702. Mortgages eligible for assistance

No assistance shall be extended with respect to any mortgage under this chapter unless—

- (1) the holder of the mortgage has indicated to the mortgagor its intention to foreclose;
- (2) the mortgagor and holder of the mortgage have certified that circumstances make it probable that there will be a foreclosure and that the mortgagor is in need of emergency mortgage relief as authorized by this chapter;
- (3) payments under the mortgage have been delinquent for at least three months;
- (4) the mortgagor has incurred a substantial reduction in income as a result of involuntary unemployment or underemployment due to adverse economic conditions or medical conditions and is financially unable to make full mortgage payments;
- (5) there is a reasonable prospect that the mortgagor will be able to make the adjustments necessary for a full resumption of mortgage payments; and
- (6) the mortgaged property is the principal residence of the mortgagor.

(Pub. L. 94–50, title I, §103, July 2, 1975, 89 Stat. 249; Pub. L. 111–203, title XIV, §1496(b)(1), July 21, 2010, 124 Stat. 2207.)

EDITORIAL NOTES

AMENDMENTS

2010—Par. (2). Pub. L. 111–203, §1496(b)(1)(A), substituted "have certified" for "have indicated in writing to the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') and to any agency or department of the Federal Government responsible for the regulation of the holder" and struck out "(such as the volume of delinquent loans in its portfolio)" after "circumstances" and ", except that such statement by the holder of the mortgage may be waived by the Secretary if in his judgment such waiver would further the purposes of this chapter" after "by this chapter".

Par. (4). Pub. L. 111–203, §1496(b)(1)(B), inserted "or medical conditions" after "adverse economic conditions".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§2703. Manner of assistance and repayment

(a) Form of assistance

Assistance under this chapter with respect to a mortgage which meets the requirements of section

2702 of this title may be provided in the form of emergency mortgage relief loans and advances of credit insured pursuant to section 2704 of this title or in the form of emergency mortgage relief payments made by the Secretary pursuant to section 2705 of this title.

(b) Amount of assistance

Assistance under this chapter on behalf of a homeowner may be made available in an amount up to the amount of the principal, interest, taxes, ground rents, hazard insurance, and mortgage insurance premiums due under the homeowner's mortgage. The amount of assistance provided to a homeowner under this chapter shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed \$50,000.

(c) Monthly payments; extension of time; report of increase in income

Monthly payments may be provided under this chapter either with the proceeds of an insured loan or advance of credit or with emergency mortgage relief payments for up to twelve months, and, in accordance with criteria prescribed by the Secretary, such monthly payments may be extended once for up to twelve additional months. A mortgagor receiving the benefit of mortgage relief assistance pursuant to this chapter shall be required, in accordance with criteria prescribed by the Secretary, to report any increase in income which will permit a reduction or termination of such assistance during this period.

(d) Conditions and terms of repayment; interest rate

Emergency loans or advances of credit made and insured under section 2704 of this title, and emergency mortgage relief payments made under section 2705 of this title, shall be repayable by the homeowner upon such terms and conditions as the Secretary shall prescribe, except that (1) the rate of interest on any loan or advance of credit insured under this chapter shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act [12 U.S.C. 1707 et seq.] at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this chapter. In establishing rates, terms and conditions for loans or advances of credit made under this chapter, the Secretary shall take into account a homeowner's ability to repay such loan or advance of credit.

(e) Deferral of commencement of repayment; security for repayment

The Secretary may provide for the deferral of the commencement of the repayment of a loan or advance insured under section 2704 of this title or emergency mortgage relief payments made under section 2705 of this title until one year following the date of the last disbursement of the proceeds of the loan or advance or payments or for such longer period as the Secretary determines would further the purpose of this chapter. Any eligible homeowner who receives a grant or an advance of credit under this chapter may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable. The Secretary shall by regulation require such security for the repayment of insured loans or advances of credit or emergency mortgage relief payments as he deems appropriate and may require that such repayment be secured by a lien on the mortgaged property.

(Pub. L. 94-50, title I, §104, July 2, 1975, 89 Stat. 250; Pub. L. 111-203, title XIV, §1496(b)(2), July 21, 2010, 124 Stat. 2208.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (d)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title II of the Act is classified generally to subchapter II (§1707 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203, §1496(b)(2)(A), substituted ". The amount of assistance provided to a homeowner under this chapter shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed \$50,000." for ", but such assistance shall not exceed the lesser of \$250 per month or the amount determined to be reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment."

Subsec. (d). Pub. L. 111–203, §1496(b)(2)(B), substituted "(1) the rate of interest on any loan or advance of credit insured under this chapter shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this chapter. In establishing rates, terms and conditions for loans or advances of credit made under this chapter, the Secretary shall take into account a homeowner's ability to repay such loan or advance of credit." for "interest on a loan or advance of credit insured under section 2704 of this title or emergency mortgage relief payments made under section 2705 of this title shall not be charged at a rate which exceeds the maximum interest rate applicable with respect to mortgages insured pursuant to section 1709(b) of this title."

Subsec. (e). Pub. L. 111–203, §1496(b)(2)(C), inserted "Any eligible homeowner who receives a grant or an advance of credit under this chapter may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable." after "purpose of this chapter."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§2704. Insurance for emergency mortgage loans and advances

(a) Institutions eligible

The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe, to insure banks, trust companies, finance companies, mortgage companies, savings and loan associations, insurance companies, credit unions, and such other financial institutions, which the Secretary finds to be qualified by experience and facilities and approves as eligible for insurance, against losses which they may sustain as a result of emergency loans or advances of credit made in accordance with the provisions of section 2703 of this title and this section with respect to mortgages eligible for assistance under this chapter.

(b) Premium charge; amount

The Secretary is authorized to fix a premium charge or charges for the insurance granted under this section, but in the case of any loan or advance of credit, such charge or charges shall not exceed an amount equivalent to one-half of 1 per centum per annum of the principal obligation of such loan or advance of credit outstanding at any time.

(c) Waiver of compliance with rules and regulations; finality and incontestability of payment for loss; transfer of insurance

The Secretary is authorized and empowered to waive compliance with any rule or regulation prescribed by the Secretary for the purposes of this section if, in the Secretary's judgment, the enforcement of such rule or regulation would impose an injustice upon an insured lending institution which has substantially complied with such regulations in good faith. Any payment for loss made to an insured financial institution under this section shall be final and incontestable after two years from

the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of such institution unless a demand for repurchase of the obligation shall have been made on behalf of the United States prior to the expiration of such two-year period. The Secretary is authorized to transfer to any financial institution approved for insurance under this chapter any insurance in connection with any loan which may be sold to it by another insured financial institution.

(d) Maximum aggregate amount of loans and advances insured

The aggregate amount of loans and advances insured under this section and emergency mortgage relief payments made under section 2705 of this title shall not exceed \$3,000,000,000.

(e) Underwriting guidelines and procedures

The Secretary shall establish underwriting guidelines or procedures to allocate amounts made available for loans and advances insured under this section and for emergency relief payments made under section 2705 of this title based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 2702(5) of this title.

(Pub. L. 94–50, title I, §105, July 2, 1975, 89 Stat. 251; Pub. L. 111–203, title XIV, §1496(b)(3), July 21, 2010, 124 Stat. 2208.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsecs. (b) to (d). Pub. L. 111–203, §1496(b)(3)(A), (C), redesignated subsecs. (c) to (e) as (b) to (d), respectively, and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows: "In no case shall the insurance granted by the Secretary under this section to any financial institution on loans and advances made by such financial institution for the purposes of this chapter exceed 40 per centum of the total amount of such loans and advances made by the institution, except that, with respect to any individual loan or advance of credit, the amount of any claim for loss on such individual loan or advance of credit paid by the Secretary under the provision of this section shall not exceed 90 per centum of such loss."

Subsec. (e). Pub. L. 111–203, §1496(b)(3)(D), added subsec. (e). Former subsec. (e) redesignated (d).

Pub. L. 111–203, §1496(b)(3)(B), inserted "and emergency mortgage relief payments made under section 2705 of this title" after "insured under this section" and substituted "\$3,000,000,000" for "\$1,500,000,000 at any one time".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§2705. Emergency mortgage relief payments

(a) Direct payments to mortgagee

In the case of any mortgagee which would otherwise be eligible to participate in the program authorized under section 2704 of this title but does not qualify for an advance or advances as authorized by section 2712 ¹ of this title or under section 1430, 1430b, or 1431 of this title or otherwise elects not to participate in the program authorized under section 2704 of this title, the Secretary is authorized to make repayable emergency mortgage relief payments directly to such mortgagee on behalf of homeowners whose mortgages are held by such financial institution and who are delinquent in their mortgage payments.

(b) Mortgages eligible; terms and conditions

Emergency mortgage relief payments shall be made under this section only with respect to a mortgage which meets the requirements of section 2702 of this title and only on such terms and conditions as the Secretary may prescribe, subject to the provisions of section 2703 of this title.

(c) Processing of relief payments; power of Secretary

The Secretary may make such delegations and accept such certifications with respect to the processing of mortgage relief payments provided under this section as he deems appropriate to facilitate the prompt and efficient implementation of the assistance authorized under this section. (Pub. L. 94–50, title I, §106, July 2, 1975, 89 Stat. 251.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2712 of this title, referred to in subsec. (a), was repealed by Pub. L. 111–203, title XIV, §1496(b)(7), July 21, 2010, 124 Stat. 2209.

¹ See References in Text note below.

§2706. Emergency Homeowners' Relief Fund

To carry out the purposes of this chapter, the Secretary is authorized to establish in the Treasury of the United States an Emergency Homeowners' Relief Fund (hereinafter in this chapter referred to as the "fund") which shall be available to the Secretary without fiscal year limitation—

(1) for making payments in connection with defaulted loans or advances of credit insured under section 2704 of this title;

(2) for making emergency mortgage relief payments under section 2705 of this title;

(3) to pay such administrative expenses (or portion of such expenses) of carrying out the provisions of this chapter as the Secretary may deem necessary.

(Pub. L. 94–50, title I, §107, July 2, 1975, 89 Stat. 252; Pub. L. 98–479, title II, §204(m)(1), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 111–203, title XIV, §1496(b)(4), July 21, 2010, 124 Stat. 2208.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 struck out subsec. (a) designation before "To carry out" and subsec. (b) which read as follows: "The fund shall be credited with—

"(1) all amounts received by the Secretary as premium charges for insurance or as repayment for emergency mortgage relief payments under this chapter and all receipts, earnings, collections, or proceeds derived from any claim or other assets acquired by the Secretary under this Act; and

"(2) such amounts as may be appropriated for the purposes of this chapter."

1984—Subsec. (a). Pub. L. 98–479, §204(m)(1)(A), (B), redesignated subsec. (a)(1) as subsec. (a) and subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively.

Subsec. (b). Pub. L. 98–479, §204(m)(1)(C), (D), redesignated subsec. (a)(2) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EMERGENCY MORTGAGE RELIEF

Pub. L. 111–203, title XIV, §1496(a), July 21, 2010, 124 Stat. 2207, provided that: "Effective October 1, 2010, and notwithstanding any other provision of law, there is hereby made available to the Secretary of Housing and Urban Development such sums as are necessary to provide \$1,000,000,000 in assistance through the Emergency Homeowners' Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act [12 U.S.C. 2701 et seq.]."

§2707. Authority of Secretary

(a) Rules and regulations

The Secretary is authorized to make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(b) Payment of expenses and charges relating to acquisition, handling, improvement, or disposal of real and personal property

Notwithstanding any other provision of law relating to the acquisition, handling, improvement, or disposal of real or other property by the United States, the Secretary shall have power, for the protection of the interest of the fund authorized under this chapter, to pay out of such fund all expenses or charges in connection with the acquisition, handling, improvement, or disposal of any property, real or personal, acquired by the Secretary as a result of recoveries under security, subrogation, or other rights.

(c) Powers with respect to property rights held by Secretary

In the performance of, with respect to, the functions, powers, and duties vested in the Secretary by this chapter, the Secretary shall—

(1) have the power, notwithstanding any other provision of law, whether before or after default, to provide by contract or otherwise for the extinguishment upon default of any redemption, equitable, legal, or other right, title in any mortgage, deed, trust, or other instrument held by or held on behalf of the Secretary under the provisions of this chapter; and

(2) have the power to foreclose on any property or commence any action to protect or enforce any right conferred upon the Secretary by law, contract, or other agreement, and bid for and purchase at any foreclosure or other sale any property in connection with which assistance has been provided pursuant to this chapter. In the event of any such acquisition, the Secretary may, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, remodel and convert, dispose of, lease, and otherwise deal with, such property. Notwithstanding any other provision of law, the Secretary also shall have power to pursue to final collection by way of compromise or otherwise all claims acquired by him in connection with any security, subrogation, or other rights obtained by him in administering this chapter.

(d) Coverage of existing programs

The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this chapter.

(Pub. L. 94–50, title I, §108, July 2, 1975, 89 Stat. 252; Pub. L. 111–203, title XIV, §1496(b)(5), July 21, 2010, 124 Stat. 2208.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§2708. Expiration date

No loans or advance of credit shall be insured and no emergency mortgage relief payments made under this chapter after September 30, 2011, except if such loan or advance or such payments are made with respect to a mortgagor receiving the benefit of a loan or advance insured, or emergency mortgage relief payments made, under this chapter on such date.

(Pub. L. 94–50, title I, §109, July 2, 1975, 89 Stat. 253; Pub. L. 94–375, §13(a), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 111–203, title XIV, §1496(b)(6), July 21, 2010, 124 Stat. 2209.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 struck out "Authorization and" before "expiration date" in section catchline, struck out subsec. (a), struck out subsec. (b) designation before "No loans", and substituted "2011" for "1977". Prior to amendment, subsec. (a) read as follows: "There are authorized to be appropriated for purposes of this chapter such sums as may be necessary, except that the funds authorized to be appropriated for section 2705 of this title shall not exceed \$500,000,000. Any amounts so appropriated shall remain available until expended."

1976—Subsec. (b). Pub. L. 94–375 substituted "September 30, 1977" for "June 30, 1976".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§§2709, 2710. Repealed. Pub. L. 111–203, title XIV, §1496(b)(7), July 21, 2010, 124 Stat. 2209

Section 2709, Pub. L. 94–50, title I, §110, July 2, 1975, 89 Stat. 253; Pub. L. 94–375, §13(b), Aug. 3, 1976, 90 Stat. 1075; Pub. L. 98–479, title II, §204(m)(2), Oct. 17, 1984, 98 Stat. 2234; Pub. L. 111–203, title III, §361, July 21, 2010, 124 Stat. 1549, related to waiver and relaxation by institutions and approved mortgagees of limitations with respect to mortgage delinquencies; notification to Federal supervisory agency prior to foreclosure proceedings.

Section 2710, Pub. L. 94–50, title I, §111, July 2, 1975, 89 Stat. 253; Pub. L. 94–375, §13(c), Aug. 3, 1976, 90 Stat. 1075, related to reports to Congress; time; contents.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective on the date on which final regulations implementing such repeal take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601

of Title 15, Commerce and Trade.

§2711. Nonapplicability of other laws

Notwithstanding any provision of law which limits the nature, amount, term, form, or rate of interest, or the nature, amount, or form of security of loans or advances of credit, loans, or advances of credit may be made in accordance with the provisions of this chapter without regard to such provision of law.

(Pub. L. 94–50, title I, §110, formerly §112, July 2, 1975, 89 Stat. 254; renumbered §110, Pub. L. 111–203, title XIV, §1496(b)(8), July 21, 2010, 124 Stat. 2209.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 110 of Pub. L. 94–50, which related to waiver and relaxation by institutions and approved mortgagees of limitations with respect to mortgage delinquencies; notification to Federal supervisory agency prior to foreclosure proceedings, was classified to section 2709 of this title prior to repeal by Pub. L. 111–203, title XIV, §1496(b)(7), July 21, 2010, 124 Stat. 2209.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment of section by renumbering section 112 of Pub. L. 94–50 as section 110 of Pub. L. 94–50 effective on the date on which final regulations implementing such amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§2712. Repealed. Pub. L. 111–203, title XIV, §1496(b)(7), July 21, 2010, 124 Stat. 2209

Section, Pub. L. 94–50, title I, §113, July 2, 1975, 89 Stat. 254, related to Federal Deposit Insurance Corporation advances to insured banks.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective on the date on which final regulations implementing such repeal take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

CHAPTER 29—HOME MORTGAGE DISCLOSURE

Sec.

- 2801. Congressional findings and declaration of purpose.
- 2802. Definitions.
- 2803. Maintenance of records and public disclosure.
- 2804. Enforcement.
- 2805. Relation to State laws.
- 2806. Compliance improvement methods.
- 2807. Report.
- 2808. Effective date.

- 2809. Compilation of aggregate data.
- 2810. Disclosure by Secretary; commencement, scope, etc.
- 2811. Repealed.

§2801. Congressional findings and declaration of purpose

(a) Findings of Congress

The Congress finds that some depository institutions have sometimes contributed to the decline of certain geographic areas by their failure pursuant to their chartering responsibilities to provide adequate home financing to qualified applicants on reasonable terms and conditions.

(b) Purpose of chapter

The purpose of this chapter is to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.

(c) Construction of chapter

Nothing in this chapter is intended to, nor shall it be construed to, encourage unsound lending practices or the allocation of credit.

(Pub. L. 94–200, title III, §302, Dec. 31, 1975, 89 Stat. 1125.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 94–200, title III, §301, Dec. 31, 1975, 89 Stat. 1125, provided that: "This title [this chapter] may be cited as the 'Home Mortgage Disclosure Act of 1975'."

§2802. Definitions

For purposes of this chapter—

- (1) the term "Bureau" means the Bureau of Consumer Financial Protection;
- (2) the term "mortgage loan" means a loan which is secured by residential real property or a home improvement loan;
- (3) the term "depository institution"—
 - (A) means—
 - (i) any bank (as defined in section 1813(a)(1) of this title);
 - (ii) any savings association (as defined in section 1813(b)(1) of this title); and
 - (iii) any credit union,

which makes federally related mortgage loans as determined by the Board; and

(B) includes any other lending institution (as defined in paragraph (4) ¹) other than any institution described in subparagraph (A);

(4) the term "completed application" means an application in which the creditor has received the information that is regularly obtained in evaluating applications for the amount and type of credit requested;

(5) the term "other lending institutions" means any person engaged for profit in the business of mortgage lending;

(6) the term "Board" means the Board of Governors of the Federal Reserve System; and

(7) the term "Secretary" means the Secretary of Housing and Urban Development.

(Pub. L. 94–200, title III, §303, Dec. 31, 1975, 89 Stat. 1125; Pub. L. 100–242, title V, §565(a)(1), Feb. 5, 1988, 101 Stat. 1945; Pub. L. 101–73, title XII, §1211(d), (e), Aug. 9, 1989, 103 Stat. 525; Pub. L. 111–203, title X, §1094(2), July 21, 2010, 124 Stat. 2097.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 added par. (1) and redesignated former pars. (1) to (6) as (2) to (7), respectively.

1989—Par. (2). Pub. L. 101–73, §1211(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "the term 'depository institution' means any commercial bank, savings bank, savings and loan association, building and loan association, homestead association (including cooperative banks) or credit union which makes federally related mortgage loans as determined by the Board, mortgage banking subsidiary of a bank holding company or savings and loan holding company, or savings and loan service corporation that originates or purchases mortgage loans;"

Pars. (3) to (6). Pub. L. 101–73, §1211(e), added pars. (3) and (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

1988—Par. (2). Pub. L. 100–242 struck out "or" before "homestead association" and inserted before semicolon at end ", mortgage banking subsidiary of a bank holding company or savings and loan holding company, or savings and loan service corporation that originates or purchases mortgage loans".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–73, title XII, §1211(k), Aug. 9, 1989, 103 Stat. 526, provided that: "The amendments made by this section [amending this section and sections 2803, 2804, 2807, and 2810 of this title] shall apply to each calendar year beginning after December 31, 1989."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–242, title V, §565(a)(4), Feb. 5, 1988, 101 Stat. 1945, as amended by Pub. L. 100–628, title X, §1087(a), Nov. 7, 1988, 102 Stat. 3280, provided that: "The amendments made by this subsection [amending sections 2802, 2803, and 2810 of this title] shall be applicable to the portion of calendar year 1988 that begins August 19, 1988, and to each calendar year beginning after December 31, 1988."

¹ So in original. Probably should be "paragraph (5)".

§2803. Maintenance of records and public disclosure

(a) Duty of depository institutions; nature and content of information

(1) Each depository institution which has a home office or branch office located within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, as defined by the Department of Commerce shall compile and make available, in accordance with regulations of the Bureau, to the public for inspection and copying at the home office, and at least one branch office within each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the depository institution has an office the number and total dollar amount of mortgage loans which were (A) originated (or for which the institution received completed applications), or (B) purchased by that institution during each fiscal year (beginning with the last full fiscal year of that institution which immediately preceded the effective date of this chapter).

(2) The information required to be maintained and made available under paragraph (1) shall also

be itemized in order to clearly and conspicuously disclose the following:

(A) The number and dollar amount for each item referred to in paragraph (1), by census tracts for mortgage loans secured by property located within any county with a population of more than 30,000, within that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, otherwise, by county, for mortgage loans secured by property located within any other county within that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

(B) The number and dollar amount for each item referred to in paragraph (1) for all such mortgage loans which are secured by property located outside that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

For the purpose of this paragraph, a depository institution which maintains offices in more than one primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas shall be required to make the information required by this paragraph available at any such office only to the extent that such information relates to mortgage loans which were originated or purchased (or for which completed applications were received) by an office of that depository institution located in the primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the office making such information available is located. For purposes of this paragraph, other lending institutions shall be deemed to have a home office or branch office within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas if such institutions have originated or purchased or received completed applications for at least 5 mortgage loans in such area in the preceding calendar year.

(b) Itemization of loan data

Any item of information relating to mortgage loans required to be maintained under subsection (a) shall be further itemized in order to disclose for each such item—

(1) the number and dollar amount of mortgage loans which are insured under title II of the National Housing Act [12 U.S.C. 1707 et seq.] or under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] or which are guaranteed under chapter 37 of title 38;

(2) the number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage loan;

(3) the number and dollar amount of home improvement loans;

(4) the number and dollar amount of mortgage loans and completed applications involving mortgagors or mortgage applicants grouped according to census tract, income level, racial characteristics, age, and gender;

(5) the number and dollar amount of mortgage loans grouped according to measurements of—

(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

(D) such other information as the Bureau may require; and

(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

(A) the value of the real property pledged or proposed to be pledged as collateral;

(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

(D) the actual or proposed term in months of the mortgage loan;

(E) the channel through which application was made, including retail, broker, and other relevant categories;

(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 5102 of this title;

(G) as the Bureau may determine to be appropriate, a universal loan identifier;

(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and

(J) such other information as the Bureau may require.

(c) Period of maintenance

Any information required to be compiled and made available under this section, other than loan application register information under subsection (j), shall be maintained and made available for a period of five years after the close of the first year during which such information is required to be maintained and made available.

(d) Duration of disclosure requirements

Notwithstanding the provisions of subsection (a)(1), data required to be disclosed under this section for 1980 and thereafter shall be disclosed for each calendar year. Any depository institution which is required to make disclosures under this section but which has been making disclosures on some basis other than a calendar year basis shall make available a separate disclosure statement containing data for any period prior to calendar year 1980 which is not covered by the last full year report prior to the 1980 calendar year report.

(e) Format for disclosures

Subject to subsection (h), the Bureau shall prescribe a standard format for the disclosures required under this section.

(f) Data disclosure system; operation, etc.

The Federal Financial Institutions Examination Council, in consultation with the Secretary, shall implement a system to facilitate access to data required to be disclosed under this section. Such system shall include arrangements for a central depository of data in each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas. Disclosure statements shall be made available to the public for inspection and copying at such central depository of data for all depository institutions which are required to disclose information under this section (or which are exempted pursuant to section 2805(b) of this title) and which have a home office or branch office within such primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

(g) Exceptions

The requirements of subsections (a) and (b) shall not apply with respect to mortgage loans that are—

(1) made (or for which completed applications are received) by any mortgage banking subsidiary of a bank holding company or savings and loan holding company or by any savings and loan service corporation that originates or purchases mortgage loans; and

(2) approved (or for which completed applications are received) by the Secretary for insurance under title I or II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.].

(h) Submission to agencies

(1) In general

The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this chapter, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in consultation with other appropriate agencies described in paragraph (2) and, after notice and comment, shall develop regulations that—

(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;

(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this chapter;

(C) require disclosure of the class of the purchaser of such loans;

(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and

(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.

(2) Other appropriate agencies

The appropriate agencies described in this paragraph are—

(A) the appropriate Federal banking agencies, as defined in section 1813(q) of this title, with respect to the entities that are subject to the jurisdiction of each such agency, respectively;

(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 2802(2)(A) ¹ of this title which is not otherwise referred to in this paragraph;

(C) the National Credit Union Administration Board with respect to credit unions; and

(D) the Secretary of Housing and Urban Development with respect to other lending institutions not regulated by the agencies referred to in subparagraph (A) or (B).

(3) Rules for modifications under paragraph (1)

(A) Application

A modification under paragraph (1)(E) shall apply to information concerning—

(i) credit score data described in subsection (b)(6)(I), in a manner that is consistent with the purpose described in paragraph (1)(E); and

(ii) age or any other category of data described in paragraph (5) or (6) of subsection (b), as the Bureau determines to be necessary to satisfy the purpose described in paragraph (1)(E), and in a manner consistent with that purpose.

(B) Standards

The Bureau shall prescribe standards for any modification under paragraph (1)(E) to effectuate the purposes of this chapter, in light of the privacy interests of mortgage applicants or mortgagors. Where necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the disclosure of information described in subparagraph (A) in aggregate or other reasonably modified form, in order to effectuate the purposes of this chapter.

(i) Exemptions

(1) Closed-end mortgage loans

With respect to an insured depository institution or insured credit union, the requirements of paragraphs (5) and (6) of subsection (b) shall not apply with respect to closed-end mortgage loans if the insured depository institution or insured credit union originated fewer than 500 closed-end

mortgage loans in each of the 2 preceding calendar years.

(2) Open-end lines of credit

With respect to an insured depository institution or insured credit union, the requirements of paragraphs (5) and (6) of subsection (b) shall not apply with respect to open-end lines of credit if the insured depository institution or insured credit union originated fewer than 500 open-end lines of credit in each of the 2 preceding calendar years.

(3) ² Required compliance

Notwithstanding paragraphs (1) and (2), an insured depository institution shall comply with paragraphs (5) and (6) of subsection (b) if the insured depository institution has received a rating of "needs to improve record of meeting community credit needs" during each of its 2 most recent examinations or a rating of "substantial noncompliance in meeting community credit needs" on its most recent examination under section 2906(b)(2) of this title.

(3) ² Exemption from certain disclosure requirements

The requirements of subsections (b)(4), (b)(5), and (b)(6) shall not apply with respect to any depository institution described in section 2802(3)(A) of this title which has total assets, as of the most recent full fiscal year of such institution, of \$30,000,000 or less.

(j) Loan application register information

(1) In general

In addition to the information required to be disclosed under subsections (a) and (b), any depository institution which is required to make disclosures under this section shall make available to the public, upon request, loan application register information (as defined by the Bureau by regulation) in the form required under regulations prescribed by the Bureau.

(2) Format of disclosure

(A) Unedited format

Subject to subparagraph (B), the loan application register information described in paragraph (1) may be disclosed by a depository institution without editing or compilation and in such formats as the Bureau may require.

(B) Protection of applicant's privacy interest

The Bureau shall require, by regulation, such deletions as the Bureau may determine to be appropriate to protect—

(i) any privacy interest of any applicant, including the deletion of the applicant's name and identification number, the date of the application, and the date of any determination by the institution with respect to such application; and

(ii) a depository institution from liability under any Federal or State privacy law.

(C) Census tract format encouraged

It is the sense of the Congress that a depository institution should provide loan register information under this section in a format based on the census tract in which the property is located.

(3) Change of form not required

A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require ³

(4) Reasonable charge for information

Any depository institution which provides information under this subsection may impose a reasonable fee for any cost incurred in reproducing such information.

(5) Time of disclosure

The disclosure of the loan application register information described in paragraph (1) for any year pursuant to a request under paragraph (1) shall be made—

(A) in the case of a request made on or before March 1 of the succeeding year, before April 1 of the succeeding year; and

(B) in the case of a request made after March 1 of the succeeding year, before the end of the 30-day period beginning on the date the request is made.

(6) Retention of information

Notwithstanding subsection (c), the loan application register information described in paragraph (1) for any year shall be maintained and made available, upon request, for 3 years after the close of the 1st year during which such information is required to be maintained and made available.

(7) Minimizing compliance costs

In prescribing regulations under this subsection, the Bureau shall make every effort to minimize the costs incurred by a depository institution in complying with this subsection and such regulations.

(k) Disclosure of statements by depository institutions

(1) In general

In accordance with procedures established by the Bureau pursuant to this section, any depository institution required to make disclosures under this section—

(A) shall make a disclosure statement available, upon request, to the public no later than 3 business days after the institution receives the statement from the Federal Financial Institutions Examination Council; and

(B) may make such statement available on a floppy disc which may be used with a personal computer or in any other media which is not prohibited under regulations prescribed by the Bureau.

(2) Notice that data is subject to correction after final review

Any disclosure statement provided pursuant to paragraph (1) shall be accompanied by a clear and conspicuous notice that the statement is subject to final review and revision, if necessary.

(3) Reasonable charge for information

Any depository institution which provides a disclosure statement pursuant to paragraph (1) may impose a reasonable fee for any cost incurred in providing or reproducing such statement.

(l) Prompt disclosures

(1) In general

Any disclosure of information pursuant to this section or section 2809 of this title shall be made as promptly as possible.

(2) Maximum disclosure period

(A) 6- and 9-month maximum periods

Except as provided in subsections (j)(5) and (k)(1) and regulations prescribed by the Bureau and subject to subparagraph (B), any information required to be disclosed for any year beginning after December 31, 1992, under—

(i) this section shall be made available to the public before September 1 of the succeeding year; and

(ii) section 2809 of this title shall be made available to the public before December 1 of the succeeding year.

(B) Shorter periods encouraged after 1994

With respect to disclosures of information under this section or section 2809 of this title for any year beginning after December 31, 1993, every effort shall be made—

(i) to make information disclosed under this section available to the public before July 1 of

the succeeding year; and

(ii) to make information required to be disclosed under section 2809 of this title available to the public before September 1 of the succeeding year.

(3) Improved procedure

The Federal Financial Institutions Examination Council shall make such changes in the system established pursuant to subsection (f) as may be necessary to carry out the requirements of this subsection.

(m) Opportunity to reduce compliance burden

(1) In general

(A) Satisfaction of public availability requirements

A depository institution shall be deemed to have satisfied the public availability requirements of subsection (a) if the institution compiles the information required under that subsection at the home office of the institution and provides notice at the branch locations specified in subsection (a) that such information is available from the home office of the institution upon written request.

(B) Provision of information upon request

Not later than 15 days after the receipt of a written request for any information required to be compiled under subsection (a), the home office of the depository institution receiving the request shall provide the information pertinent to the location of the branch in question to the person requesting the information.

(2) Form of information

In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require.

(n) Timing of certain disclosures

The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this chapter, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.

(o) Definitions

In this section—

(1) the term "insured credit union" has the meaning given the term in section 1752 of this title; and

(2) the term "insured depository institution" has the meaning given the term in section 1813 of this title.

(Pub. L. 94–200, title III, §304, Dec. 31, 1975, 89 Stat. 1125; Pub. L. 96–399, title III, §340(a), Oct. 8, 1980, 94 Stat. 1657; Pub. L. 98–181, title I [title VII, §701(a)], Nov. 30, 1983, 97 Stat. 1266; Pub. L. 100–242, title V, §§565(a)(2), 570(h), Feb. 5, 1988, 101 Stat. 1945, 1950; Pub. L. 101–73, title XII, §1211(a)–(c)(2)(C), (f), (i), (j), Aug. 9, 1989, 103 Stat. 524–526; Pub. L. 102–242, title II, §212(a)(1), Dec. 19, 1991, 105 Stat. 2299; Pub. L. 102–550, title IX, §932(a), (b), Oct. 28, 1992, 106 Stat. 3889, 3891; Pub. L. 104–208, div. A, title II, §2225(b), Sept. 30, 1996, 110 Stat. 3009–416; Pub. L. 111–203, title X, §1094(1), (3), July 21, 2010, 124 Stat. 2097; Pub. L. 115–174, title I, §104(a), (c), May 24, 2018, 132 Stat. 1300, 1301.)

EDITORIAL NOTES

REFERENCES IN TEXT

For the effective date of this chapter, referred to in subsec. (a)(1), see section 2808 of this title.

The National Housing Act, referred to in subsecs. (b)(1) and (g)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246. Titles I and II of the National Housing Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (b)(1), is act July 15, 1949, ch. 338, 63 Stat. 413. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

Section 2802(2)(A) of this title, referred to in subsec. (h)(2)(B), was redesignated section 2802(3)(A) of this title by Pub. L. 111–203, title X, §1094(2)(A), July 21, 2010, 124 Stat. 2097.

AMENDMENTS

2018—Subsec. (i). Pub. L. 115–174, §104(a)(2), added subsec. (i), consisting of pars. (1) to (3), before par. (3) relating to exemption from certain disclosure requirements, which was formerly designated subsec. (i).

Subsec. (i)(3). Pub. L. 115–174, §104(a)(1), (c), redesignated subsec. (i) as par. (3) relating to exemption from certain disclosure requirements, realigned margins, and substituted "2802(3)(A) of this title" for "2802(2)(A) of this title".

Subsec. (o). Pub. L. 115–174, §104(a)(3), added subsec. (o).

Subsec. (a)(1). Pub. L. 111–203, §1094(1), substituted "Bureau" for "Board".

Subsec. (b)(4). Pub. L. 111–203, §1094(3)(A)(i), inserted "age," before "and gender".

Subsec. (b)(5), (6). Pub. L. 111–203, §1094(3)(A)(ii)–(iv), added pars. (5) and (6).

Subsec. (e). Pub. L. 111–203, §1094(1), substituted "Bureau" for "Board".

Subsec. (h). Pub. L. 111–203, §1094(3)(B), added subsec. (h) and struck out former subsec. (h) which related to submission to agencies.

Subsec. (i). Pub. L. 111–203, §1094(3)(C), substituted "subsections (b)(4), (b)(5), and (b)(6)" for "subsection (b)(4)".

Subsec. (j)(1). Pub. L. 111–203, §1094(1), substituted "Bureau" for "Board" in two places.

Subsec. (j)(2)(A). Pub. L. 111–203, §1094(3)(D)(ii), substituted "in such formats as the Bureau may require" for "in the format in which such information is maintained by the institution".

Subsec. (j)(2)(B). Pub. L. 111–203, §1094(1), substituted "Bureau" for "Board" in two places.

Subsec. (j)(3). Pub. L. 111–203, §1094(3)(D)(i), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: "A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in the form in which the institution maintains such information."

Subsecs. (j)(7), (k)(1), (l)(2)(A). Pub. L. 111–203, §1094(1), substituted "Bureau" for "Board" wherever appearing.

Subsec. (m)(2). Pub. L. 111–203, §1094(3)(E), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: "In complying with paragraph (1), a depository institution shall, in the sole discretion of the institution, provide the person requesting the information with—

"(A) a paper copy of the information requested; or

"(B) if acceptable to the person, the information through a form of electronic medium, such as a computer disk."

Subsec. (n). Pub. L. 111–203, §1094(3)(F), added subsec. (n).

1996—Subsec. (m). Pub. L. 104–208 added subsec. (m).

1992—Subsec. (c). Pub. L. 102–550, §932(b), inserted ", other than loan application register information under subsection (j)," after "under this section".

Subsecs. (j) to (l). Pub. L. 102–550, §932(a), added subsecs. (j) to (l).

1991—Subsec. (h)(1). Pub. L. 102–242, §212(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: "the Comptroller of the Currency for national banks;"

Subsec. (h)(3). Pub. L. 102–242, §212(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: "the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, and any other depository institution described in section 2802(2)(A) of this title which is not otherwise referred to in this paragraph;"

1989—Subsec. (a)(1). Pub. L. 101–73, §1211(c)(1), inserted "(or for which the institution received completed applications)" after "originated".

Subsec. (a)(2). Pub. L. 101–73, §1211(c)(2)(A), inserted "(or for which completed applications were

received)" after "originated or purchased" in last sentence.

Pub. L. 101-73, §1211(f), inserted at end "For purposes of this paragraph, other lending institutions shall be deemed to have a home office or branch office within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas if such institutions have originated or purchased or received completed applications for at least 5 mortgage loans in such area in the preceding calendar year."

Subsec. (b)(4). Pub. L. 101-73, §1211(a), added par. (4).

Subsec. (e). Pub. L. 101-73, §1211(i), substituted "Subject to subsection (h), the Board" for "The Board".

Subsec. (g)(1). Pub. L. 101-73, §1211(c)(2)(B), inserted "(or for which completed applications are received)" after "made".

Subsec. (g)(2). Pub. L. 101-73, §1211(c)(2)(C), inserted "(or for which completed applications are received)" after "approved".

Subsec. (h). Pub. L. 101-73, §1211(b), added subsec. (h).

Subsec. (i). Pub. L. 101-73, §1211(j), added subsec. (i).

1988—Subsec. (a)(1). Pub. L. 100-242, §570(h), substituted "at least one branch" for "at at least one branch".

Subsec. (g). Pub. L. 100-242, §565(a)(2), added subsec. (g).

1983—Subsecs. (a), (f). Pub. L. 98-181 substituted "primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical area" wherever appearing.

1980—Subsec. (a)(1). Pub. L. 96-399, §340(a)(1), substituted "Department of Commerce" for "Office of Management and Budget".

Subsec. (a)(2)(A). Pub. L. 96-399, §340(a)(2), revised applicable factors so as to include mortgage loans in a census tract, or by a county, and exclude readily available and reasonably costing census tracts, or by ZIP code.

Subsecs. (d) to (f). Pub. L. 96-399, §340(a)(3), added subsecs. (d) to (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-550, title IX, §932(c), Oct. 28, 1992, 106 Stat. 3891, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to information disclosed under section 304 of the Home Mortgage Disclosure Act of 1975 [this section] for any year which ends after the date of the enactment of this Act [Oct. 28, 1992]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101-73, set out as a note under section 2802 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 565(a)(2) of Pub. L. 100-242 applicable to the portion of calendar year 1988 that begins Aug. 19, 1988, and to each calendar year beginning after Dec. 31, 1988, see section 565(a)(4) of Pub. L. 100-242, set out as a note under section 2802 of this title.

EVALUATION AND REPORT ON FEASIBILITY AND DESIRABILITY OF ESTABLISHING A UNIFIED SYSTEM FOR ENFORCING FAIR LENDING LAWS AND REGULATIONS

Evaluation of status and effectiveness of data collection and analysis systems involving fair lending, etc., and report thereof, see section 340(e) of Pub. L. 96-399, set out as a note under section 3305 of this title.

¹ [*See References in Text note below.*](#)

² [*So in original. Two pars. \(3\) have been enacted.*](#)

³ So in original. Probably should be followed by a period.

§2804. Enforcement

(a) Regulations

The Bureau shall prescribe such regulations as may be necessary to carry out the purposes of this chapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary and proper to effectuate the purposes of this chapter, and prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) Powers of certain other agencies

(1) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements of this chapter shall be enforced—

(A) under section 1818 of this title, the appropriate Federal banking agency, as defined in section 1813(q) of this title, with respect to—

(i) any national bank or Federal savings association, and any Federal branch or Federal agency of a foreign bank;

(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(iii) any bank or State savings association insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as,¹ defined in section 1813(f) of this title, any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C);

(B) under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subtitle; ²

(C) under the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

(2) Incorporated definitions

The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 1813(s) of this title shall have the same meanings as in section 3101 of this title.

(c) Violations of this chapter deemed violations of certain other provisions

For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(d) Overall enforcement authority of the Bureau of Consumer Financial Protection

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], enforcement of the requirements imposed under this chapter is committed to each of the agencies under subsection (b). To facilitate research, examinations, and enforcement, all data collected pursuant to section 2803 of this title shall be available to the entities listed under subsection (b). The

Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this chapter.

(Pub. L. 94–200, title III, §305, Dec. 31, 1975, 89 Stat. 1126; Pub. L. 101–73, title VII, §744(p)(1), title XII, §1211(g), Aug. 9, 1989, 103 Stat. 440, 526; Pub. L. 102–242, title II, §212(a)(2), Dec. 19, 1991, 105 Stat. 2299; Pub. L. 111–203, title X, §1094(1), (4), July 21, 2010, 124 Stat. 2097, 2099.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (b)(1) and (d), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of this title and enacted, amended, and repealed numerous other sections and notes in the Code. Subtitle B of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of this title. Subtitle E of the Act is classified generally to part E (§5561 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (b)(1)(A)(ii), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of this title.

This subtitle, referred to in subsec. (b)(1)(B), probably refers to subtitle E of the Consumer Financial Protection Act of 2010. See above. Title III of Pub. L. 94–200, which enacted this chapter, does not contain subtitles.

The Federal Credit Union Act, referred to in subsec. (b)(1)(C), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1094(1), substituted "Bureau" for "Board" in two places.

Subsec. (b). Pub. L. 111–203, §1094(4)(A), added subsec. (b) and struck out former subsec. (b) which related to powers of certain other agencies.

Subsec. (d). Pub. L. 111–203, §1094(4)(B), added subsec. (d).

1991—Subsec. (b). Pub. L. 102–242, §212(a)(2)(B), inserted at end "The terms used in paragraph (1) that are not defined in this chapter or otherwise defined in section 1813(s) of this title shall have the meaning given to them in section 3101 of this title."

Subsec. (b)(1). Pub. L. 102–242, §212(a)(2)(A), added par. (1) and struck out former par. (1) which read as follows: "section 1818 of this title, in the case of—

"(A) national banks, by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System, other than national banks, by the Board;

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and mutual savings banks as defined in section 1813(f) of this title and any other depository institution not referred to in this paragraph or paragraph (2) or (3) of this subsection, by the Board of Directors of the Federal Deposit Insurance Corporation;"

1989—Subsec. (b)(2). Pub. L. 101–73, §744(p)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 1464(d) of this title, section 1730 of this title, and sections 1426(i) and 1437 of this title, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation) in the case of any institution subject to any of those provisions; and".

Subsec. (b)(4). Pub. L. 101–73, §1211(g), added par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 1211(g) of Pub. L. 101–73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101–73, set out as a note under section 2802 of this title.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of this title.

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

² *See References in Text note below.*

§2805. Relation to State laws

(a) In general

This chapter does not annul, alter, or affect, or exempt any State chartered depository institution subject to the provisions of this chapter from complying with the laws of any State or subdivision thereof with respect to public disclosure and recordkeeping by depositor institutions, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any such law is inconsistent with any provision of this chapter if the Bureau determines that such law requires the maintenance of records with greater geographic or other detail than is required under this chapter, or that such law otherwise provides greater disclosure than is required under this chapter.

(b) Exemption authority

The Bureau may, by regulation, exempt from the requirements of this chapter any State-chartered depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this chapter, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 1818 of this title, in the case of national banks and Federal savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(Pub. L. 94–200, title III, §306, Dec. 31, 1975, 89 Stat. 1127; Pub. L. 100–628, title X, §1087(b), Nov. 7, 1988, 102 Stat. 3280; Pub. L. 101–73, title VII, §744(p)(2), Aug. 9, 1989, 103 Stat. 440; Pub. L. 111–203, title X, §1094(1), (5), July 21, 2010, 124 Stat. 2097, 2100.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203, §1094(1), substituted "Bureau" for "Board" wherever appearing.

Subsec. (b). Pub. L. 111–203, §1094(5), added subsec. (b) and struck out former subsec. (b) which read as follows: "The Bureau may by regulation exempt from the requirements of this chapter any State chartered depository institution within any State or subdivision thereof if it determines that, under the law of such State or subdivision, that institution is subject to requirements substantially similar to those imposed under this chapter, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced under—

"(1) section 1818 of this title in the case of national banks, by the Comptroller of the Currency; and

"(2) section 1818 of this title, by the Director of the Office of Thrift Supervision in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation."

1989—Subsec. (b)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 1464(d) of this title in the case of any institution subject to that provision, by the Federal Home Loan Bank Board."

1988—Subsec. (b)(1), (2). Pub. L. 100–628 substituted "section" for "Section".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§2806. Compliance improvement methods

(a) In general

(1) Consultation required

The Director of the Bureau of Consumer Financial Protection, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this chapter.

(2) Authorization of appropriations

There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

(3) Contracting authority

The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

(b) Recommendations to Congress

The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this chapter.

(Pub. L. 94–200, title III, §307, as added Pub. L. 111–203, title X, §1094(6), July 21, 2010, 124 Stat. 2101.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2806, Pub. L. 94–200, title III, §307, Dec. 31, 1975, 89 Stat. 1127; Pub. L. 100–628, title X, §1087(c), Nov. 7, 1988, 102 Stat. 3280; Pub. L. 101–73, title VII, §744(p)(3), Aug. 9, 1989, 103 Stat. 440, which related to research and improved methods; authorization of appropriations; recommendations to congressional committees, was repealed by Pub. L. 111–203, title X, §1094(6), July 21, 2010, 124 Stat. 2101.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§2807. Report

The Bureau, in consultation with the Secretary of Housing and Urban Development, shall report annually to the Congress on the utility of the requirements of section 2803(b)(4) of this title.

(Pub. L. 94–200, title III, §308, Dec. 31, 1975, 89 Stat. 1128; Pub. L. 98–181, title I [title VII,

§701(b)], Nov. 30, 1983, 97 Stat. 1266; Pub. L. 101–73, title XII, §1211(h), Aug. 9, 1989, 103 Stat. 526; Pub. L. 111–203, title X, §1094(1), July 21, 2010, 124 Stat. 2097.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Bureau" for "Board".

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows:

"(a) The Board, in consultation with the Secretary of Housing and Urban Development, is authorized and directed to carry out a study to determine the feasibility and usefulness of requiring depository institutions located outside primary metropolitan statistical areas, metropolitan statistical areas, or consolidated metropolitan statistical areas that are not comprised of designated primary metropolitan statistical areas, as defined by the Office of Management and Budget, to make disclosures comparable to those required by this chapter.

"(b) A report on the study under this section shall be transmitted to the Congress not later than three years after December 31, 1975."

1983—Subsec. (a). Pub. L. 98–181 substituted "primary metropolitan statistical areas, metropolitan statistical areas, or consolidated metropolitan statistical areas that are not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical areas".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101–73, set out as a note under section 2802 of this title.

§2808. Effective date

(a) In general

This chapter shall take effect on the one hundred and eightieth day beginning after December 31, 1975. Any institution specified in section 2802(2)(A) ¹ of this title which has total assets as of its last full fiscal year of \$10,000,000 or less is exempt from the provisions of this chapter. The Bureau, in consultation with the Secretary, may exempt institutions described in section 2802(2)(B) ¹ of this title that are comparable within their respective industries to institutions that are exempt under the preceding sentence (as determined without regard to the adjustment made by subsection (b)).

(b) CPI adjustments

(1) In general

Subject to paragraph (2), the dollar amount applicable with respect to institutions described in section 2802(2)(A) ¹ of this title under the 2d sentence of subsection (a) shall be adjusted annually after December 31, 1996, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(2) 1-time adjustment for prior inflation

The first adjustment made under paragraph (1) after September 30, 1996, shall be the percentage by which—

(A) the Consumer Price Index described in such paragraph for the calendar year 1996, exceeds

(B) such Consumer Price Index for the calendar year 1975.

(3) Rounding

The dollar amount applicable under paragraph (1) for any calendar year shall be the amount determined in accordance with subparagraphs (A) and (B) of paragraph (2) and rounded to the nearest multiple of \$1,000,000.

(Pub. L. 94–200, title III, §309, Dec. 31, 1975, 89 Stat. 1128; Pub. L. 102–242, title II, §224(a), Dec. 19, 1991, 105 Stat. 2307; Pub. L. 102–550, title XVI, §1604(a)(15), Oct. 28, 1992, 106 Stat. 4083; Pub. L. 104–208, div. A, title II, §2225(a), Sept. 30, 1996, 110 Stat. 3009–415; Pub. L. 111–203, title X, §1094(1), July 21, 2010, 124 Stat. 2097.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 2802(2) of this title, referred to in subsecs. (a) and (b)(1), was redesignated section 2802(3) of this title by Pub. L. 111–203, title X, §1094(2)(A), July 21, 2010, 124 Stat. 2097.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 substituted "Bureau" for "Board".

1996—Pub. L. 104–208 designated existing provisions as subsec. (a), inserted heading, inserted "(as determined without regard to the adjustment made by subsection (b))" before period at end, and added subsec. (b).

1992—Pub. L. 102–550, §1604(a)(15), amended directory language of Pub. L. 102–242, §224(a). See 1991 Amendment note below.

1991—Pub. L. 102–242, §224(a), as amended by Pub. L. 102–550, §1604(a)(15), struck out "depository" before "institution", inserted "specified in section 2802(2)(A) of this title" after "institution", and inserted at end: "The Board, in consultation with the Secretary, may exempt institutions described in section 2802(2)(B) of this title that are comparable within their respective industries to institutions that are exempt under the preceding sentence."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–242, title II, §224(b), Dec. 19, 1991, 105 Stat. 2307, provided that: "This section [amending this section] shall become effective on January 1, 1992."

¹ See References in Text note below.

§2809. Compilation of aggregate data

(a) Commencement; scope of data and tables

Beginning with data for calendar year 1980, the Federal Financial Institutions Examination Council shall compile each year, for each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, aggregate data by census tract for all depository institutions which are required to disclose data under section 2803 of this title or which are exempt pursuant to section 2805(b) of this title. The Council shall also produce tables indicating, for each primary

metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, aggregate lending patterns for various categories of census tracts grouped according to location, age of housing stock, income level, and racial characteristics.

(b) Staff and data processing resources

The Bureau shall provide staff and data processing resources to the Council to enable it to carry out the provisions of subsection (a).

(c) Availability to public

The data and tables required pursuant to subsection (a) shall be made available to the public by no later than December 31 of the year following the calendar year on which the data is based.

(Pub. L. 94–200, title III, §310, as added Pub. L. 96–399, title III, §340(c), Oct. 8, 1980, 94 Stat. 1658; amended Pub. L. 98–181, title I [title VII, §701(a)], Nov. 30, 1983, 97 Stat. 1266; Pub. L. 111–203, title X, §1094(1), July 21, 2010, 124 Stat. 2097.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 2809, Pub. L. 94–200, title III, §310, Dec. 31, 1975, 89 Stat. 1128, provided for termination of authority granted by this chapter, prior to repeal by section 340(b) of Pub. L. 96–399. See section 2811 of this title.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board".

1983—Subsec. (a). Pub. L. 98–181 substituted "primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical areas" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§2810. Disclosure by Secretary; commencement, scope, etc.

Beginning with data for calendar year 1980, the Secretary shall make publicly available data in the Secretary's possession for each mortgagee which is not otherwise subject to the requirements of this chapter and which is not exempt pursuant to section 2805(b) of this title (and for each mortgagee making mortgage loans exempted under section 2803(g) of this title), with respect to mortgage loans approved (or for which completed applications are received) by the Secretary for insurance under title I or II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]. Such data to be disclosed shall consist of data comparable to the data which would be disclosed if such mortgagee were subject to the requirements of section 2803 of this title. Disclosure statements containing data for each such mortgagee for a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas shall, at a minimum, be publicly available at the central depository of data established pursuant to section 2803(f) of this title for such primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas. The Secretary shall also compile and make publicly available aggregate data for such mortgagees by census tract, and tables indicating aggregate lending patterns, in a manner comparable to the information required to be made publicly available in accordance with section 2809 of this title.

(Pub. L. 94–200, title III, §311, as added Pub. L. 96–399, title III, §340(c), Oct. 8, 1980, 94 Stat. 1658; amended Pub. L. 98–181, title I [title VII, §701(a)], Nov. 30, 1983, 97 Stat. 1266; Pub. L. 100–242, title V, §565(a)(3), Feb. 5, 1988, 101 Stat. 1945; Pub. L. 101–73, title XII, §1211(c)(2)(D), Aug. 9, 1989, 103 Stat. 525.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246. Titles I and II of the Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

1989—Pub. L. 101–73 inserted "(or for which completed applications are received)" after "approved".

1988—Pub. L. 100–242 inserted "(and for each mortgagee making mortgage loans exempted under section 2803(g) of this title)" after "section 2805(b) of this title".

1983—Pub. L. 98–181 substituted "primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical areas" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–73 applicable to each calendar year beginning after Dec. 31, 1989, see section 1211(k) of Pub. L. 101–73, set out as a note under section 2802 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–242 applicable to the portion of calendar year 1988 that begins Aug. 19, 1988, and to each calendar year beginning after Dec. 31, 1988, see section 565(a)(4) of Pub. L. 100–242, as amended, set out as a note under section 2802 of this title.

§2811. Repealed. Pub. L. 100–242, title V, §565(b), Feb. 5, 1988, 101 Stat. 1945

Section, Pub. L. 94–200, title III, §312, as added Pub. L. 96–399, title III, §340(c), Oct. 8, 1980, 94 Stat. 1659; amended Pub. L. 99–120, §5(c), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99–156, §5(c), Nov. 15, 1985, 99 Stat. 817; Pub. L. 99–219, §5(c), Dec. 26, 1985, 99 Stat. 1732; Pub. L. 99–267, §5(c), Mar. 27, 1986, 100 Stat. 75; Pub. L. 99–272, title III, §3011(c), Apr. 7, 1986, 100 Stat. 106; Pub. L. 99–289, §1(b), May 2, 1986, 100 Stat. 412; Pub. L. 99–345, §1, June 24, 1986, 100 Stat. 673; Pub. L. 99–430, Sept. 30, 1986, 100 Stat. 986; Pub. L. 100–122, §1, Sept. 30, 1987, 101 Stat. 793; Pub. L. 100–154, Nov. 5, 1987, 101 Stat. 890; Pub. L. 100–170, Nov. 17, 1987, 101 Stat. 914; Pub. L. 100–179, Dec. 3, 1987, 101 Stat. 1018; Pub. L. 100–200, Dec. 21, 1987, 101 Stat. 1327, provided that authority granted by this chapter was to expire on Mar. 15, 1988.

CHAPTER 30—COMMUNITY REINVESTMENT

Sec.

- 2901. Congressional findings and statement of purpose.
- 2902. Definitions.
- 2903. Financial institutions; evaluation.
- 2904. Report to Congress.
- 2905. Regulations.
- 2906. Written evaluations.
- 2907. Operation of branch facilities by minorities and women.
- 2908. Small bank regulatory relief.

§2901. Congressional findings and statement of purpose

(a) The Congress finds that—

(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

(2) the convenience and needs of communities include the need for credit services as well as deposit services; and

(3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.

(b) It is the purpose of this chapter to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.

(Pub. L. 95–128, title VIII, §802, Oct. 12, 1977, 91 Stat. 1147.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 95–128, title VIII, §801, Oct. 12, 1977, 91 Stat. 1147, provided that: "This title [enacting this chapter] may be cited as the 'Community Reinvestment Act of 1977'."

RESPONSIVENESS TO COMMUNITY NEEDS FOR FINANCIAL SERVICES

Pub. L. 106–102, title VII, §715, Nov. 12, 1999, 113 Stat. 1470, provided that:

"(a) **STUDY.**—The Secretary of the Treasury, in consultation with the Federal banking agencies (as defined in section 3(z) of the Federal Deposit Insurance Act [12 U.S.C. 1813(z)]), shall conduct a study of the extent to which adequate services are being provided as intended by the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], including services in low- and moderate-income neighborhoods and for persons of modest means, as a result of the enactment of this Act [see Tables for classification].

"(b) **REPORTS.**—

"(1) **IN GENERAL.**—The Secretary of the Treasury shall—

"(A) before March 15, 2000, submit a baseline report to the Congress on the study conducted pursuant to subsection (a); and

"(B) before the end of the 2-year period beginning on the date of the enactment of this Act [Nov. 12, 1999], in consultation with the Federal banking agencies, submit a final report to the Congress on the study conducted pursuant to subsection (a).

"(2) **RECOMMENDATIONS.**—The final report submitted under paragraph (1)(B) shall include such recommendations as the Secretary determines to be appropriate for administrative and legislative action with respect to institutions covered under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.]."

REPORT ON COMMUNITY DEVELOPMENT LENDING

Pub. L. 102–550, title IX, §910, Oct. 28, 1992, 106 Stat. 3874, provided that not later than 12 months after Oct. 28, 1992, the Board of Governors of the Federal Reserve System shall submit a report to Congress comparing residential, small business, and commercial lending by insured depository institutions in low-income, minority, and distressed neighborhoods to such lending in other neighborhoods, with the report to contain comparisons of relevant risks and reasons for different lending practices.

§2902. Definitions

For the purposes of this chapter—

(1) the term "appropriate Federal financial supervisory agency" means—

(A) the Comptroller of the Currency with respect to national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation);

(B) the Board of Governors of the Federal Reserve System with respect to State chartered

banks which are members of the Federal Reserve System, bank holding companies, and savings and loan holding companies;

(C) the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation, and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation).¹

(2) the term "regulated financial institution" means an insured depository institution (as defined in section 1813 of this title); and

(3) the term "application for a deposit facility" means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for—

(A) a charter for a national bank or Federal savings and loan association;

(B) deposit insurance in connection with a newly chartered State bank, savings bank, savings and loan association or similar institution;

(C) the establishment of a domestic branch or other facility with the ability to accept deposits of a regulated financial institution;

(D) the relocation of the home office or a branch office of a regulated financial institution;

(E) the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a regulated financial institution requiring approval under section 1828(c) of this title or under regulations issued under the authority of title IV ² of the National Housing Act [12 U.S.C. 1724 et seq.]; or

(F) the acquisition of shares in, or the assets of, a regulated financial institution requiring approval under section 1842 of this title or section 408(e) ² of the National Housing Act [12 U.S.C. 1730a(e)].

(4) A financial institution whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area may define its "entire community" to include its entire deposit customer base without regard to geographic proximity.

(Pub. L. 95–128, title VIII, §803, Oct. 12, 1977, 91 Stat. 1147; Pub. L. 95–630, title XV, §1502, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 101–73, title VII, §744(q), title XII, §1212(a), Aug. 9, 1989, 103 Stat. 440, 526; Pub. L. 111–203, title III, §358(1), July 21, 2010, 124 Stat. 1548.)

EDITORIAL NOTES

REFERENCES IN TEXT

The National Housing Act, referred to in par. (3)(E), (F), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title IV of the National Housing Act which was classified generally to subchapter IV (§1724 et seq.) of chapter 13 of this title, was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363. Section 408 of the National Housing Act, which was classified to section 1730a of this title, was also repealed by section 407 of Pub. L. 101–73. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

AMENDMENTS

Par. (1)(A). Pub. L. 111–203, §358(1)(A)(i), inserted "and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)" after "banks".

Par. (1)(B). Pub. L. 111–203, §358(1)(A)(ii), substituted ", bank holding companies, and savings and loan holding companies" for "and bank holding companies".

Par. (1)(C). Pub. L. 111–203, §358(1)(A)(iii), substituted ", and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)." for "; and".

Par. (2). Pub. L. 111–203, §358(1)(B), struck out par. (2) relating to the Director of the Office of Thrift Supervision which read as follows: "section 1818 of this title, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;".

1989—Par. (1)(D). Pub. L. 101–73, §744(q), directed the general amendment of par. (1)(D) but then set out "(2)" followed by the text of the new provisions. Prior to amendment, par. (1)(D) read as follows: "the Federal

Home Loan Bank Board with respect to institutions the deposits of which are insured by the Federal Savings and Loan Insurance Corporation and to savings and loan holding companies;"

Par. (2). Pub. L. 101-73, §1212(a), substituted "insured depository institution (as defined in section 1813 of this title)" for "insured bank as defined in section 1813 of this title or an insured institution as defined in section 401 of the National Housing Act".

1978—Par. (4). Pub. L. 95-630 added par. (4).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1505 of Pub. L. 95-630, set out as a note under section 27 of this title.

¹ *So in original. The period probably should be a semicolon.*

² *See References in Text note below.*

§2903. Financial institutions; evaluation

(a) In general

In connection with its examination of a financial institution, the appropriate Federal financial supervisory agency shall—

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

(2) take such record into account in its evaluation of an application for a deposit facility by such institution.

(b) Majority-owned institutions

In assessing and taking into account, under subsection (a), the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

(c) Financial holding company requirement

(1) In general

An election by a bank holding company to become a financial holding company under section 1843 of this title shall not be effective if—

(A) the Board finds that, as of the date the declaration of such election and the certification is filed by such holding company under section 1843(l)(1)(C) ¹ of this title, not all of the subsidiary insured depository institutions of the bank holding company had achieved a rating of "satisfactory record of meeting community credit needs", or better, at the most recent examination of each such institution; and

(B) the Board notifies the company of such finding before the end of the 30-day period beginning on such date.

(2) Limited exclusions for newly acquired insured depository institutions

Any insured depository institution acquired by a bank holding company during the 12-month period preceding the date of the submission to the Board of the declaration and certification under section 1843(l)(1)(C) ¹ of this title may be excluded for purposes of paragraph (1) during the 12-month period beginning on the date of such acquisition if—

(A) the bank holding company has submitted an affirmative plan to the appropriate Federal financial supervisory agency to take such action as may be necessary in order for such institution to achieve a rating of "satisfactory record of meeting community credit needs", or better, at the next examination of the institution; and

(B) the plan has been accepted by such agency.

(3) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Bank holding company; financial holding company

The terms "bank holding company" and "financial holding company" have the meanings given those terms in section 1841 of this title.

(B) Board

The term "Board" means the Board of Governors of the Federal Reserve System.

(C) Insured depository institution

The term "insured depository institution" has the meaning given the term in section 1813(c) of this title.

(d) Low-cost education loans

In assessing and taking into account, under subsection (a), the record of a financial institution, the appropriate Federal financial supervisory agency shall consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers.

(Pub. L. 95–128, title VIII, §804, Oct. 12, 1977, 91 Stat. 1148; Pub. L. 102–550, title IX, §909(1), Oct. 28, 1992, 106 Stat. 3874; Pub. L. 106–102, title I, §103(b), Nov. 12, 1999, 113 Stat. 1350; Pub. L. 110–315, title X, §1031(a), Aug. 14, 2008, 122 Stat. 3488.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1843(l)(1)(C) of this title, referred to in subsec. (c)(1)(A), (2), was redesignated section 1843(l)(1)(D) of this title by Pub. L. 111–203, title VI, §606(a)(2), July 21, 2010, 124 Stat. 1607.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–315 added subsec. (d).

1999—Subsec. (c). Pub. L. 106–102 added subsec. (c).

1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

REGULATIONS

Pub. L. 110–315, title X, §1031(b), Aug. 14, 2008, 122 Stat. 3488, provided that: "Not later than 1 year after the date of enactment of this Act [Aug. 14, 2008], each appropriate Federal financial supervisory agency shall issue rules in final form to implement section 804(d) of the Community Reinvestment Act of 1977 [12 U.S.C. 2903(d)], as added by this section."

¹ [See References in Text note below.](#)

§2904. Report to Congress

Each appropriate Federal financial supervisory agency shall include in its annual report to the Congress a section outlining the actions it has taken to carry out its responsibilities under this chapter.

(Pub. L. 95–128, title VIII, §805, Oct. 12, 1977, 91 Stat. 1148.)

§2905. Regulations

Regulations to carry out the purposes of this chapter shall be published by each appropriate Federal financial supervisory agency, except that the Comptroller of the Currency shall prescribe regulations applicable to savings associations and the Board of Governors shall prescribe regulations applicable to insured State member banks, bank holding companies and savings and loan holding companies,¹ and shall take effect no later than 390 days after October 12, 1977.

(Pub. L. 95–128, title VIII, §806, Oct. 12, 1977, 91 Stat. 1148; Pub. L. 111–203, title III, §358(2), July 21, 2010, 124 Stat. 1548.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 inserted ", except that the Comptroller of the Currency shall prescribe regulations applicable to savings associations and the Board of Governors shall prescribe regulations applicable to insured State member banks, bank holding companies and savings and loan holding companies," after "supervisory agency".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

¹ [So in original.](#)

§2906. Written evaluations

(a) Required

(1) In general

Upon the conclusion of each examination of an insured depository institution under section 2903 of this title, the appropriate Federal financial supervisory agency shall prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.

(2) Public and confidential sections

Each written evaluation required under paragraph (1) shall have a public section and a confidential section.

(b) Public section of report

(1) Findings and conclusions

(A) Contents of written evaluation

The public section of the written evaluation shall—

- (i) state the appropriate Federal financial supervisory agency's conclusions for each assessment factor identified in the regulations prescribed by the Federal financial supervisory agencies to implement this chapter;
- (ii) discuss the facts and data supporting such conclusions; and
- (iii) contain the institution's rating and a statement describing the basis for the rating.

(B) Metropolitan area distinctions

The information required by clauses (i) and (ii) of subparagraph (A) shall be presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices.

(2) Assigned rating

The institution's rating referred to in paragraph (1)(C) ¹ shall be 1 of the following:

- (A) "Outstanding record of meeting community credit needs".
- (B) "Satisfactory record of meeting community credit needs".
- (C) "Needs to improve record of meeting community credit needs".
- (D) "Substantial noncompliance in meeting community credit needs".

Such ratings shall be disclosed to the public on and after July 1, 1990.

(c) Confidential section of report

(1) Privacy of named individuals

The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, or any person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(2) Topics not suitable for disclosure

The confidential section shall also contain any statements obtained or made by the appropriate Federal financial supervisory agency in the course of an examination which, in the judgment of the agency, are too sensitive or speculative in nature to disclose to the institution or the public.

(3) Disclosure to depository institution

The confidential section may be disclosed, in whole or part, to the institution, if the appropriate Federal financial supervisory agency determines that such disclosure will promote the objectives of this chapter. However, disclosure under this paragraph shall not identify a person or organization that has provided information in confidence to a Federal or State financial supervisory agency.

(d) Institutions with interstate branches

(1) State-by-State evaluation

In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the appropriate Federal financial supervisory agency shall prepare—

- (A) a written evaluation of the entire institution's record of performance under this chapter, as required by subsections (a), (b), and (c); and
- (B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such State under this chapter, as required by subsections (a), (b), and (c).

(2) Multistate metropolitan areas

In the case of a regulated financial institution that maintains domestic branches in 2 or more States within a multistate metropolitan area, the appropriate Federal financial supervisory agency shall prepare a separate written evaluation of the institution's record of performance within such

metropolitan area under this chapter, as required by subsections (a), (b), and (c). If the agency prepares a written evaluation pursuant to this paragraph, the scope of the written evaluation required under paragraph (1)(B) shall be adjusted accordingly.

(3) Content of State level evaluation

A written evaluation prepared pursuant to paragraph (1)(B) shall—

(A) present the information required by subparagraphs (A) and (B) of subsection (b)(1) separately for each metropolitan area in which the institution maintains 1 or more domestic branch offices and separately for the remainder of the nonmetropolitan area of the State if the institution maintains 1 or more domestic branch offices in such nonmetropolitan area; and

(B) describe how the Federal financial supervisory agency has performed the examination of the institution, including a list of the individual branches examined.

(e) Definitions

For purposes of this section the following definitions shall apply:

(1) Domestic branch

The term "domestic branch" means any branch office or other facility of a regulated financial institution that accepts deposits, located in any State.

(2) Metropolitan area

The term "metropolitan area" means any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area, as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency.

(3) State

The term "State" has the same meaning as in section 1813 of this title.

(Pub. L. 95–128, title VIII, §807, as added Pub. L. 101–73, title XII, §1212(b), Aug. 9, 1989, 103 Stat. 527; amended Pub. L. 102–242, title II, §222, Dec. 19, 1991, 105 Stat. 2306; Pub. L. 103–328, title I, §110, Sept. 29, 1994, 108 Stat. 2364.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1)(A)(i) and (c)(3), was in the original "this Act" and was translated as reading "this title", meaning title VIII of Pub. L. 95–128, known as the Community Reinvestment Act of 1977, to reflect the probable intent of Congress.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–328, §110(b), redesignated existing provisions as subpar. (A) and former subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsecs. (d), (e). Pub. L. 103–328, §110(a), added subsecs. (d) and (e).

1991—Subsec. (a)(1). Pub. L. 102–242, §222(b)(1), substituted "financial supervisory" for "depository institutions regulatory".

Subsec. (b)(1)(A). Pub. L. 102–242, §222(b)(2), substituted "financial supervisory" for "depository institutions regulatory" in two places.

Subsec. (b)(1)(B). Pub. L. 102–242, §222(a), inserted "and data" after "facts".

Subsec. (c). Pub. L. 102–242, §222(b)(3), substituted "financial supervisory" for "depository institutions regulatory" wherever appearing.

¹ *So in original. Probably should be paragraph "(1)(A)(iii)".*

(a) In general

In the case of any depository institution which donates, sells on favorable terms (as determined by the appropriate Federal financial supervisory agency), or makes available on a rent-free basis any branch of such institution which is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution, the amount of the contribution or the amount of the loss incurred in connection with such activity may be a factor in determining whether the depository institution is meeting the credit needs of the institution's community for purposes of this chapter.

(b) Definitions

For purposes of this section—

(1) Minority depository institution

The term "minority institution" ¹ means a depository institution (as defined in section 1813(c) of this title)—

(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

(2) Women's depository institution

The term "women's depository institution" means a depository institution (as defined in section 1813(c) of this title)—

(A) more than 50 percent of the ownership or control of which is held by 1 or more women;

(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and

(C) a significant percentage of senior management positions of which are held by women.

(3) Minority

The term "minority" has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(Pub. L. 95–128, title VIII, §808, as added Pub. L. 102–233, title IV, §402(b), Dec. 12, 1991, 105 Stat. 1775; amended Pub. L. 102–550, title IX, §909(2), Oct. 28, 1992, 106 Stat. 3874.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, referred to in subsec. (b)(3), is section 1204(c)(3) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–550 substituted "may be a factor in determining whether the depository institution is" for "shall be treated as".

¹ *So in original. Probably should be "minority depository institution".*

§2908. Small bank regulatory relief

(a) In general

Except as provided in subsections (b) and (c), any regulated financial institution with aggregate assets of not more than \$250,000,000 shall be subject to routine examination under this chapter—

(1) not more than once every 60 months for an institution that has achieved a rating of "outstanding record of meeting community credit needs" at its most recent examination under

section 2903 of this title;

(2) not more than once every 48 months for an institution that has received a rating of "satisfactory record of meeting community credit needs" at its most recent examination under section 2903 of this title; and

(3) as deemed necessary by the appropriate Federal financial supervisory agency, for an institution that has received a rating of less than "satisfactory record of meeting community credit needs" at its most recent examination under section 2903 of this title.

(b) No exception from CRA examinations in connection with applications for deposit facilities

A regulated financial institution described in subsection (a) shall remain subject to examination under this chapter in connection with an application for a deposit facility.

(c) Discretion

A regulated financial institution described in subsection (a) may be subject to more frequent or less frequent examinations for reasonable cause under such circumstances as may be determined by the appropriate Federal financial supervisory agency.

(Pub. L. 95–128, title VIII, §809, as added Pub. L. 106–102, title VII, §712, Nov. 12, 1999, 113 Stat. 1469.)

CHAPTER 31—NATIONAL CONSUMER COOPERATIVE BANK

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§3001. Congressional statement of findings and purpose

The economic and financial structure of this country in combination with the Nation's natural resources and the productivity of the American people has produced one of the highest average standards of living in the world. However, the Nation has been experiencing inflation and unemployment together with an increasing gap between producers' prices and consumers' purchasing power. This has resulted in a growing number of our citizens, especially the elderly, the poor, and the inner city resident, being unable to share in the fruits of our Nation's highly efficient economic system. The Congress finds that user-owned cooperatives are a proven method for broadening ownership and control of the economic organizations, increasing the number of market participants, narrowing price spreads, raising the quality of goods and services available to their membership, and building bridges between producers and consumers, and their members and patrons. The Congress also finds that consumer and other types of self-help cooperatives have been hampered in their formation and growth by lack of access to adequate cooperative credit facilities and lack of technical assistance. Therefore, the Congress finds a need for the establishment of a National Consumer Cooperative Bank which will make available necessary financial and technical assistance to cooperative self-help endeavors as a means of strengthening the Nation's economy.

(Pub. L. 95–351, §2, Aug. 20, 1978, 92 Stat. 499.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–206, §1, Dec. 7, 1989, 103 Stat. 1832, provided that: "This Act [amending section 3014 of this title] may be cited as the 'National Consumer Cooperative Bank Amendments of 1989'."

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title III, §390, Aug. 13, 1981, 95 Stat. 433, provided that: "This subtitle [subtitle C (§§390–396) of title III of Pub. L. 97–35, enacting sections 3017a, 3026, and 3051 of this title; amending sections 3011 to 3015, 3017, 3018, 3019, 3024, 3025, 3042, and 3043 of this title, section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance; and enacting provisions set out as notes under sections 3011 to 3015, 3017, 3017a, 3019, 3025, and 3026 of this title] may be cited as the 'National Consumer Cooperative Bank Act Amendments of 1981'."

SHORT TITLE

Pub. L. 95–351, §1, Aug. 20, 1978, 92 Stat. 499, provided: "That this Act [enacting this chapter and amending section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance] may be cited as the 'National Consumer Cooperative Bank Act'."

SUBCHAPTER I—ESTABLISHMENT AND OPERATION

§3011. Creation and charter; principal office; venue; purposes

The Congress of the United States hereby creates and charters a body corporate to be known as the National Consumer Cooperative Bank (hereinafter in this chapter referred to as the "Bank"). The

Bank shall have perpetual existence unless and until its charter is revoked or modified by Act of Congress. The right to revise, amend, or modify the charter of the Bank is specifically and exclusively reserved to the Congress. The principal office of the Bank shall be in Washington, District of Columbia, and, for the purpose of venue, shall be considered a resident thereof. It shall make loans and offer its services throughout the United States, its territories and possessions, and in the Commonwealth of Puerto Rico. The Bank shall—

- (1) encourage the development of new and existing cooperatives eligible for its assistance by providing specialized credit and technical assistance;
- (2) maintain broad-based control of the Bank by its voting stockholders;
- (3) encourage broad-based ownership, control, and active participation by members in eligible cooperatives;
- (4) assist in improving the quality and availability of goods and services to consumers; and
- (5) encourage ownership of its equity securities by cooperatives and others as provided in section 3014 of this title, so that the date when all of the Bank's class A stock owned by the United States has been fully redeemed (the "Final Government Equity Redemption Date") occurs as early as practicable.

(Pub. L. 95–351, title I, §101, Aug. 20, 1978, 92 Stat. 499; Pub. L. 97–35, title III, §396(b), Aug. 13, 1981, 95 Stat. 439.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–351, Aug. 20, 1978, 92 Stat. 499, known as the National Consumer Cooperative Bank Act, which enacted this chapter, amended section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance, and enacted provisions set out as a note under section 3001 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions respecting creation, and denomination of the National Consumer Cooperative Bank, for provisions respecting creation, denomination, and status of the National Consumer Cooperative Bank.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title III, §396(i), Aug. 13, 1981, 95 Stat. 441, provided that: "The amendments made by subsections (b) through (h) [amending this section, sections 3014, 3017, 3018, 3024, and 3043 of this title, section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

FINAL GOVERNMENT EQUITY REDEMPTION DATE ESTABLISHED

For establishment of Final Government Equity Redemption Date as Dec. 31, 1981, see section 3026 of this title and notes set out under that section.

§3012. General corporate powers

The Bank shall have the power to make and service loans, commitments for credit, guarantees, furnish financially related services, technical assistance and the results of research, issue its

obligations within the limitations imposed by section 3017 of this title in such amounts, at such times, and on such terms as the Bank may determine, and to exercise the other powers and duties prescribed in this chapter, and shall have the power to—

- (1) operate under the direction of its Board of Directors;
- (2) adopt, alter, and use a corporate seal, which shall be judicially noted;
- (3) elect by its Board of Directors a president, one or more vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, and define their duties in accordance with regulations and standards adopted by the Board, and require surety bonds or make other provisions against losses occasioned by acts of employees;
- (4) prescribe by its Board of Directors its bylaws not inconsistent with law, which shall establish the terms of office and the procedure for election of elective members; provide in a manner not inconsistent with this chapter for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; and prescribe the manner in which its officers, employees, and agents are elected or selected, its property acquired, held and transferred, its loans, commitments, other financial assistance, guarantees and appraisals may be made, its general business conducted, and the privilege granted it by law exercised and enjoyed;
- (5) enter into contracts and make advance, progress, or other payments with respect to such contracts, without regard to the provisions of section 3324(a) and (b) of title 31;
- (6) sue and be sued in its corporate name and complain and defend, in any court of competent jurisdiction, State or Federal;
- (7) acquire, hold, lease, mortgage, or dispose of, at public or private sale, real and personal property and sell or exchange any securities or obligations, and otherwise exercise all the usual incidents of ownership of property necessary or convenient to its business: *Provided*, That any such acquisition or ownership of real property shall not deprive a State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights of the inhabitants of such property under Federal, State, or local laws;
- (8) obtain insurance against loss in connection with property and other assets;
- (9) modify or consent to the modification with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which it is a party or has an interest pursuant to this chapter;
- (10) utilize and act through any Federal, State, or local public agency or instrumentality, or private agency or organization, with the consent of the agency or organization concerned, and contract with such agency, instrumentality, or organization for furnishing or receiving technical services and benefits of research, services, funds or facilities; and make advance, progress, or other payments with respect to such contracts without regard to section 3324(a) and (b) of title 31;
- (11) within the limitations of section 3017 of this title, borrow money and issue notes, bonds and debentures or other obligations individually or in concert with other financial institutions, agencies or instrumentalities, of such character and such terms and conditions and at rates of interest as may be determined;
- (12) issue certificates of indebtedness to its stockholders or members and pay interest on funds left with the Bank, and accept grants or interest free temporary use of funds made available to it;
- (13) participate with one or more other financial institutions, agencies, instrumentalities, or foundations in loans or guarantees under this chapter on terms as may be agreed upon;
- (14) accept guarantees from other agencies for which loans made by the Bank may be eligible;
- (15) establish one or more branch offices and one or more advisory councils in connection with any such branch offices, as may from time to time be authorized by the Board of Directors;
- (16) buy and sell obligations of, or insured by, the United States or any agency or instrumentalities thereof, or securities backed by the full faith and credit of any such agency or instrumentality and, after the final Government Equity Redemption Date, make such other investments as may be authorized by the Board of Directors;
- (17) approve the salary scale of officers and employees of the Bank, in accordance with regulations and standards adopted by the Board of Directors, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General

Schedule pay rates, but, except as otherwise provided in this chapter, the General Schedule pay rates shall be applicable until all class A stock held by the Secretary of the Treasury has been retired; and

(18) have such other incidental powers as may be necessary or expedient to carry out its duties under this chapter.

In determining whether a public offering is taking place for the purpose of the Securities Act of 1933 [15 U.S.C. 77a et seq.], there shall be excluded from consideration all class B and class C stock purchases which took place prior to August 13, 1981.

(Pub. L. 95-351, title I, §102, Aug. 20, 1978, 92 Stat. 500; Pub. L. 97-35, title III, §394(d)(1), Aug. 13, 1981, 95 Stat. 436.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

CODIFICATION

In pars. (5) and (10), "section 3324(a) and (b) of title 31" substituted for "section 3648 of the Revised Statutes [31 U.S.C. 529]" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1981—Pub. L. 97-35 substituted provisions relating to a public offering for purposes of the Securities Act of 1933, for provisions setting forth criteria for the term "exempt securities".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title III, §394(d)(2), Aug. 13, 1981, 95 Stat. 436, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." See section 396(a) of Pub. L. 97-35 set out below.

"FINAL GOVERNMENT EQUITY REDEMPTION DATE" DEFINED

Pub. L. 97-35, title III, §396(a), Aug. 13, 1981, 95 Stat. 439, provided that: "For purposes of this subtitle [see Short Title of 1981 Amendment note set out under section 3001 of this title], the term 'Final Government Equity Redemption Date' shall have the same meaning given such term in section 101(5) of the National Consumer Cooperative Bank Act (12 U.S.C. 3011(5))."

§3013. Board of Directors

(a) Composition; term of office; removal by President

The Bank shall be governed by a Board of Directors (hereinafter in this chapter referred to as the "Board") which shall consist of 15 members. All members shall serve for a term of 3 years. After the expiration of the term of any member, such member may continue to serve until his successor has been elected or has been appointed and qualified. Any member appointed by the President may be removed for cause by the President.

(b) Appointment by President; election by stockholders

(1) The President shall appoint, by and with the advice and consent of the Senate—

(A) one member who shall be selected from among proprietors of small business concerns, as defined under section 632 of title 15, which are manufacturers or retailers;

(B) one member who shall be selected from among the officers of the agencies and departments of the United States; and

(C) one member who shall be selected from among persons having extensive experience in the cooperative field representing low-income cooperatives eligible to borrow from the Bank.

(2) Twelve members of the Board shall be elected by the holders of class B stock and class C stock in accordance with the provisions of subsection (d) and the bylaws of the Bank.

(c) Resignations; continuances; completion of term; committee representation

(1) On the day after the Final Government Equity Redemption Date, all members of the Board of Directors of the Bank who were appointed by the President shall resign, except that—

(A) the member who shall have been appointed by the President from among proprietors of small business concerns, and

(B) one member who shall be designated by the President and who shall have been appointed by the President from among the officers and employees of the agencies and departments of the United States Government,

may continue to serve until their successors have been appointed and qualified.

(2) Any member of the Board of Directors of the Bank who was elected by the holders of class B or class C stock before the Final Government Equity Redemption Date shall serve the remainder of the term for which such member was elected.

(3) Any member appointed pursuant to subsection (b)(1) shall be entitled to sit on any committee of the Board, but not more than one member so appointed may sit on any one committee.

(d) Elections; nominations by cooperative classes; vacancies filled; representation requirements

(1) All elections of members of the Board by the holders of class B stock and class C stock shall be conducted in accordance with the bylaws of the Bank. Such bylaws shall conform to the requirements of this section. Nominations for such elections shall be made by the following classes of cooperatives: (A) housing, (B) consumer goods, (C) low-income cooperatives, (D) consumer services, and (E) all other eligible cooperatives.

(2)(A) Vacant shareholder directorships shall be filled so that at any time when there are three or more shareholder directors on the Board, there shall be at least one director representing each of the following classes of cooperatives: (i) housing cooperatives, (ii) low-income cooperatives, and (iii) consumer goods and services cooperatives.

(B) Each nominee for a shareholder directorship of a particular class shall have at least three years experience as a director or senior officer in the class of cooperatives to be represented.

(C) No one class of cooperatives specified in paragraph (1) shall be represented on the Board by more than three directors.

(e) Terms; officer of Bank not to serve as director; notice requirements of Bank and voting shareholders

No director shall be eligible to be elected for more than two consecutive full three-year terms. No officer of the Bank shall be eligible to serve simultaneously as a director on the Board of the Bank. The Bank shall give adequate advance notice to all voting stockholders of nominees and of the procedures for nominating other candidates. Each voting stockholder shall make the information required in this paragraph available to its members.

(f) Annual election of chairman and vice chairman and selection of secretary; eligibility; establishment of Bank policies and direction of management

The Board shall annually elect from among its members a chairman and vice chairman and select a secretary who need not be a member. The Board shall establish the policies of the Bank governing its funding, lending, and other financial and technical assistance, and shall direct the management of the Bank.

(g) Conduct of meetings; rules governing

The Board shall meet at least quarterly. Its meeting shall be open to members or representatives of all eligible cooperatives and other eligible organizations, as observers only, and to persons or representatives of groups who identify their interest in the Bank and who are invited to attend a meeting, subject to such rules as the Board may establish for the conduct of such meetings. Those rules shall include the manner of giving notice of meetings, the procedure for the conduct of meetings, the manner of submitting topics for the agenda, the allocation of time of presentations, and debate. The chairman, when sustained by the majority of the Board present, may adjourn the open meeting into an executive session on motion of the chairman, any Board member, or at the request of any applicant, borrower, officer, or employee when the matter under discussion involves an application, a loan, a personnel action, or other matter which might tend to impinge on the right of privacy of any person.

(h) Compensation and expenses

Members of the Board appointed by the President from among the officers of the agencies and departments of the United States Government shall not receive any additional compensation by virtue of their service on the Board. The member of the Board appointed from among proprietors of small business and the member of the Board appointed pursuant to subsection (b)(1)(C) shall (1) receive compensation at a rate equal to the daily equivalent of the rate prescribed for grade GS-18 under section 5332 of title 5 for each day that they are engaged in the performance of their duties on the Board, and (2) be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) ¹ of title 5 for each day that they are away from their homes or regular places of business in the performance of their duties on the Board. The members of the Board who are elected by the holders of class B stock and class C stock shall be compensated in accordance with the bylaws of the Bank. All compensation and expenses paid to the members of the Board of Directors shall be paid by the Bank.

(Pub. L. 95-351, title I, §103, Aug. 20, 1978, 92 Stat. 502; Pub. L. 96-149, Dec. 16, 1979, 93 Stat. 1089; Pub. L. 97-35, title III, §393(a), (b), Aug. 13, 1981, 95 Stat. 435, 436.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (h), was amended generally by Pub. L. 94-22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-35, §393(a), substituted provisions relating to composition, term of office, and removal by the President, for provisions relating to composition, appointment, eligibility, removal, and vacancies.

Subsec. (b). Pub. L. 97-35, §393(a), substituted provisions relating to appointment by the President, and election by the stockholders, for provisions relating to resignation and termination of terms of Presidential appointees, shareholder directorships, resignation of remaining Presidential appointees on Final Government Equity Redemption Date, and continuation of Presidential appointment power.

Subsec. (c). Pub. L. 97-35, §393(a), substituted provisions relating to resignations, continuances, completion of term, and committee representation, for provisions relating to nominating criteria for appointment or election, and representational limitations.

Subsec. (d). Pub. L. 97-35, §393(a), substituted provisions relating to nominations by cooperative classes, vacancies, and representational requirements for elections, for provisions relating to rules governing election of successors to resigned Presidential appointees and successors to shareholder directors.

Subsec. (h). Pub. L. 97-35, §393(b), inserted provisions relating to compensation of members elected by holders of class B and C stock, and provisions relating to payment of compensation and expenses by the Bank, and substituted provisions relating to members appointed under subsec. (b)(1)(C) of this section, for provisions relating to Final Government Equity Redemption Date, and members elected by holders of class B and C stock.

1979—Subsec. (a). Pub. L. 96–149, §1(a), inserted provisions respecting appointment of a member from among proprietors of small business concerns, and substituted "fifteen" for "thirteen", "eight" for "seven", and "this section" for "this section 104", which for purposes of codification had been editorially translated as "section 3014 of this title".

Subsec. (b). Pub. L. 96–149, §1(b), substituted provisions respecting criteria for resignations of initial two additional Board members and the additional Board member, for provisions respecting criteria for resignation of an additional Board member, and substituted "Five of the" for "Five".

Subsec. (d). Pub. L. 96–149, §1(c), substituted "five of the" for "all five".

Subsec. (h). Pub. L. 96–149, §1(d), inserted provisions relating to Board member appointed from among proprietors of small businesses.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title III, §393(c), Aug. 13, 1981, 95 Stat. 436, provided that: "The amendments made by subsections (a) and (b) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

¹ See References in Text note below.

§3014. Capitalization

(a) Subscriptions for capital; authorization of appropriations

The capital of the Bank shall consist of capital subscribed by borrowers from the Bank, by cooperatives eligible to become borrowers, by organizations owned and controlled by such borrowers, by foundations, trust or charitable funds, by public bodies, by other public or private investors, and by the United States. There are authorized to be appropriated not to exceed \$47,000,000 for fiscal year 1982 for purposes of purchasing class A stock.

(b) Classes of stock; general requirements respecting rights, powers, privileges, and preferences

The capital stock of the Bank shall include class B and class C stock and such other classes with such rights, powers, privileges, and preferences of the separate classes as may be specified, not inconsistent with law, in the bylaws of the Bank. Class A notes which are held by the United States shall have first preference with respect to assets and interest payments over all classes of stock issued by the Bank. So long as any class A notes are outstanding, the Bank shall not pay any dividend on any class of stock at a rate greater than the statutory interest rate payable on class A notes. Class B and class C stock shall be common stock with voting rights as provided for herein and shall be issued only to eligible borrowers and organizations controlled by such borrowers or organizations eligible to borrow, and shall be transferable only on the books of the Bank and then only to another eligible borrower. No holder of voting stock of the Bank shall be entitled to more than one vote regardless of the number of shares of stock of other classes held, except as provided in subsection (g) of this section.

(c) Class A notes; interest payments; redemption, etc.

The holder of class A notes shall be entitled to interest at a rate or rates determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding

marketable obligations of the United States of comparable terms and conditions as of the last day of the month preceding each issuance of such class A notes to the Secretary of the Treasury, except that, until October 1, 1990, interest payments shall not exceed 25 percent of gross revenues for the year, less necessary operating expenses including a reserve for possible losses. From time to time, the Bank may, with the approval of the Secretary of the Treasury and consistent with the terms of this chapter, issue replacement class A notes upon terms and conditions to be agreed upon by the Bank and the Secretary, bearing interest as provided in this subsection, in substitution for those class A notes previously issued. Any such interest payment may be deferred by the Board of Directors with the approval of the Secretary of the Treasury, except that any interest payment so deferred shall bear interest at a rate equal to the rate determined pursuant to the first sentence of this subsection. Without the approval of the Secretary of the Treasury, the Bank shall not pay any dividend or distribution on, or make any redemption or repurchase of, any class of stock at any time when the deferred interest payments on class A notes shall not have been paid in full, together with any unpaid interest on such notes. Upon any liquidation or dissolution of the Bank, the holder of class A notes shall be entitled to receive out of the assets of the Bank available for distribution to its stockholders, prior to any payment to the holders of any class of stock of the Bank, an amount not less than the aggregate face value of all class A notes outstanding, plus all accrued and unpaid interest payments accrued thereon to and including the date of payment (together with all unpaid interest thereon). The class A notes shall be redeemed and retired as soon as practicable consistent with the purposes of this chapter (such redemption to be at a price equal to the face value of the class A notes so redeemed plus interest payments accrued thereon to the date of redemption), except that beginning on October 1, 1990, there shall be redeemed as a minimum with respect to each fiscal year a number of class A notes having an aggregate face value equal to the aggregate consideration received by the Bank for the issue of its class B and class C stock during that fiscal year. Each such redemption shall take place not later than ninety days after the close of each fiscal year. All class A notes shall be redeemed by the Bank no later than October 31, 2020.

(d) Class B stock; ownership requirements, etc.

Class B stock shall be held only by recipients of loans under section 3015 of this title, and such borrowers shall be required to own class B stock in an amount not less than 1 per centum of the face amount of the loan at the time the loan is made. Such borrowers may be required by the Bank to own additional class B or class C stock at the time the loan is made, but not to exceed an amount equal to 10 per centum of the face amount of the loan, or from time to time, as the Bank may determine. Such additional stock ownership requirements may be on the basis of the face amount of the loan, the outstanding balances, or on a percentage of interest payable during any year or any quarter thereof, as the Bank may determine will provide adequate capital for the operation of the Bank and equitable ownership thereof among borrowers.

(e) Class C stock; purchase, dividends, etc.

Class C stock shall be available for purchase and shall be held only by borrowers or by organizations eligible to borrow under section 3015 of this title or by organizations controlled by such borrowers, and shall be entitled to dividends in the manner specified in the bylaws of the Bank. Such dividends shall be payable only from income, and, until all class A notes has ¹ been retired, the rate of such dividends shall not exceed the rate of the statutory interest payment on class A notes.

(f) Nonvoting stock of other classifications and priorities; issuance, etc.

Nonvoting stock of other classifications and other priorities may be issued at the discretion of the Board, to other investors, except that so long as any class A notes are outstanding, the Board shall not authorize or issue any class of stock, whether voting or nonvoting, that would rank prior or equal to the class A notes as to dividends, interest payments, or upon liquidation or dissolution.

(g) Voting requirements of bylaws

(1) The bylaws of the Bank may provide for more than one vote on the basis of—

(A) the amount of class B stock, class C stock, or both classes held, with such limitations as will encourage investments in class C stock;

- (B) the amount of patronage of the Bank; and
- (C) number of members in the cooperative.

(2) Such bylaws shall avoid—

(A) voting control of the Bank from becoming concentrated with the larger affluent or smaller less affluent organizations;

(B) a disproportionately larger vote in one or more of the groups of cooperatives referred to in section 3013(d)(2)(A) of this title; and

(C) the concentration of more than 5 per centum of the total voting control in any one class B or class C stockholder.

(h) Acceptance by Bank of nonreturnable capital contributions

The Bank may accept nonreturnable capital contributions on which no interest, dividend, or patronage refund shall be payable from associations, foundations, or funds or public bodies or agencies at the discretion of the Board.

(i) Patronage refunds

After payment of all operating expenses of the Bank, including interest on its obligations, and after setting aside appropriate funds for reserves for losses, for interest payments on class A notes and dividends on class C stock and for any redemption of class A notes in accordance with subsection (c), the Bank shall annually set aside the remaining earnings of the Bank for patronage refunds in the form of class B or C stock or allocated surplus in accordance with the bylaws of the Bank. After ten years from the date of issue of any such stock, or at such earlier time as all the Government-held stock is retired, patronage refunds may be made in cash, or partly in stock and partly in cash.

(Pub. L. 95–351, title I, §104, Aug. 20, 1978, 92 Stat. 503; Pub. L. 97–35, title III, §§394(c)(1), 395(b)(2), 396(c), Aug. 13, 1981, 95 Stat. 436, 439; Pub. L. 101–206, §2, Dec. 7, 1989, 103 Stat. 1832.)

EDITORIAL NOTES

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–206 substituted "The holder of class A notes shall be entitled to interest at a rate or rates determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable terms and conditions as of the last day of the month preceding each issuance of such class A notes to the Secretary of the Treasury, except that, until October 1, 1990, interest payments shall not exceed 25 percent of gross revenues for the year, less necessary operating expenses including a reserve for possible losses. From time to time, the Bank may, with the approval of the Secretary of the Treasury and consistent with the terms of this chapter, issue replacement class A notes upon terms and conditions to be agreed upon by the Bank and the Secretary, bearing interest as provided in this subsection, in substitution for those class A notes previously issued." for "The holder of class A notes shall be entitled to interest payments at a rate determined by the Secretary of the Treasury taking into consideration the average market yield, during the month preceding the close of each fiscal year, on outstanding marketable obligations of the United States of comparable maturity, except that until October 1, 1990, such interest payments shall not exceed 25 per centum of gross revenues for the year less necessary operating expenses, including a reserve for possible losses. Such interest payments shall be payable annually into miscellaneous receipts of the Treasury and shall be cumulative." and inserted at end "All class A notes shall be redeemed by the Bank no later than October 31, 2020."

1981—Subsec. (a). Pub. L. 97–35, §§394(c)(1), 395(b)(2), inserted "by other public or private investors," after "public bodies," and substituted provisions authorizing appropriations for fiscal year 1982, for provisions authorizing appropriations beginning with the fiscal year ending Sept. 30, 1979, and authorizing use of amounts authorized but not appropriated.

Subsec. (b). Pub. L. 97–35, §396(c)(1), substituted "class B" for "class A, class B," and substituted provisions relating to class A notes, for provisions relating to class A preferred stock.

Subsec. (c). Pub. L. 97–35, §396(c)(2), substituted provisions relating to interest payments, redemption, etc., of class A notes, for provisions relating to issuance, dividends, etc., of class A stock.

Subsec. (e). Pub. L. 97–35, §396(c)(3), substituted provisions relating to class A notes, for provisions

relating to class A stock.

Subsec. (f). Pub. L. 97-35, §396(c)(4), substituted provisions relating to class A notes, for provisions relating to class A stock.

Subsec. (g)(2)(B). Pub. L. 97-35, §396(c)(5), substituted "3013(d)(2)(A)" for "3013(c)".

Subsec. (h). Pub. L. 97-35, §396(c)(6), struck out provision respecting treatment of the Bank as a governmental unit within section 170(b)(1)(A)(v) of title 26.

Subsec. (i). Pub. L. 97-35, §396(c)(7), substituted provisions relating to class A notes, for provisions relating to class A stock.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title III, §394(c)(2), Aug. 13, 1981, 95 Stat. 436, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see section 396(a) of Pub. L. 97-35, set out as a note under section 3012 of this title.

Pub. L. 97-35, title III, §395(b)(3), Aug. 13, 1981, 95 Stat. 439, provided that: "The amendments made by paragraphs (1) [amending section 3042 of this title] and (2) [amending this section] shall take effect on October 1, 1981."

Amendment by section 396(c) of Pub. L. 97-35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 3011 of this title.

¹ So in original. Probably should be "have".

§3015. Eligibility of cooperatives

(a) General requirements

For the purpose of all subchapters of this chapter, subject to the limitations of subsection (d) of this section, an eligible cooperative is an organization chartered or operated on a cooperative, not-for-profit basis for producing or furnishing goods, services or facilities, primarily for the benefit of its members or voting stockholders who are ultimate consumers of such goods, services, or facilities, or a legally chartered entity primarily owned and controlled by any such organization or organizations, if it—

(1) makes such goods, services or facilities directly or indirectly available to its members or voting stockholders on a not-for-profit basis;

(2) does not pay dividends on voting stock or membership capital in excess of such percentage per annum as may be approved under the bylaws of the Bank;

(3) provides that its net savings shall be allocated or distributed to all members or patrons, in proportion to their patronage, or shall be retained for the actual or potential expansion of its services or the reduction of its charges to the patrons, or for such other purposes as may be authorized by its membership not inconsistent with its purposes;

(4) makes membership available on a voluntary basis, without any social, political, racial, or religious discrimination and without any discrimination on the basis of age, sex, or marital status, to all persons who can make use of its services and are willing to accept the responsibilities of membership, subject only to limitations under applicable Federal or State laws or regulations;

(5) in the case of primary cooperative organizations restricts its voting control to members or voting stockholders on a one vote per person basis (except that this requirement shall not apply to any housing cooperative in existence on March 21, 1980, which did not meet such requirement on such date) and takes positive steps to insure economic democracy and maximum participation by members of the cooperative including the holding of annual meetings and, in the case of organizations owned by groups of cooperatives, provides positive protections to insure economic democracy; and

(6) is not a credit union, mutual savings bank, or mutual savings and loan association.

(b) Primary producers

No organization shall be ineligible because it produces, markets, or furnishes goods, services, or facilities on behalf of its members as primary producers, unless the dollar volume of loans made by the Bank to such organizations exceeds 10 per centum of the gross assets of the Bank.

(c) "Net savings" defined

As used in this section, the term "net savings" means, for any period, the borrower's gross receipts, less the operating and other expenses deductible therefrom in accordance with generally accepted accounting principles, including, without limitation, contributions to allowable reserves, and after deducting the amounts of any dividends on its capital stock or other membership capital payable during, or within forty-five days after, the close of such period.

(d) Cooperatives eligible for other Federal credit assistance

An eligible cooperative which also has been determined to be eligible for credit assistance from the Rural Electrification Administration, the National Rural Utilities Cooperative Finance Corporation, the Banks for Cooperatives or other institutions of the Farm Credit System, or the Farmers Home Administration may receive the assistance authorized by this chapter only (1) if the Bank determines that a request for assistance from any such source or sources has been rejected or denied solely because of the unavailability of funds from such source or sources, or (2) by agreement between the Bank and the agency or agencies involved.

(e) Credit unions eligible for technical assistance from Office of Self-Help Development and Technical Assistance

Notwithstanding any other provision of this section, a credit union serving predominantly low-income members (as defined by the Administrator of the National Credit Union Administration) may receive technical assistance under subchapter II.

(Pub. L. 95–351, title I, §105, Aug. 20, 1978, 92 Stat. 506; Pub. L. 97–35, title III, §394(e)(1), (f), Aug. 13, 1981, 95 Stat. 436, 437; Pub. L. 115–334, title VI, §6602(b)(18), Dec. 20, 2018, 132 Stat. 4777.)

EDITORIAL NOTES

REFERENCES IN TEXT

All subchapters of this chapter, referred to in subsec. (a), was in the original "all titles of this Act", meaning titles I to III of Pub. L. 95–351. Titles I and II constitute this chapter and title III amended section 5315 of Title 5, Government Organization and Employees, and sections 856, 867, and 868 of former Title 31, Money and Finance.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–334 struck out "the Rural Telephone Bank," after "the National Rural Utilities Cooperative Finance Corporation,".

1981—Subsec. (a). Pub. L. 97–35, §394(e)(1), substituted "primarily owned" for "entirely owned".

Subsec. (a)(5). Pub. L. 97–35, §394(f), inserted provisions relating to exception for housing cooperatives in existence on Mar. 21, 1980.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title III, §394(e)(2), Aug. 13, 1981, 95 Stat. 437, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of this title.

§3016. Annual meetings; notice, agenda, etc.

The Bank shall hold an annual meeting of its stockholders which shall be open to the public. At least 30 days' advance notice of the time and place of the annual meeting shall be given to all stockholders. Borrowers from the Bank shall also give notice of the meeting to their members, who shall be entitled to attend. At such meeting the Bank shall give a full report of its activities during the year and its financial condition and may present proposals for future action and other matters of general concern to borrowers and organizations eligible to borrow from the Bank. Members and representatives of borrowers may present motions or resolutions relating to matters within the scope of this chapter and may participate in the discussion thereof and other matters on the agenda.

(Pub. L. 95–351, title I, §106, Aug. 20, 1978, 92 Stat. 507.)

§3017. Bonds, debentures, notes and other evidences of indebtedness

(a) Authorization for public or private sale; time of issuance, interest rates, and terms and conditions; outstanding amount

The Bank is authorized to obtain funds through the public or private sale of its bonds, debentures, notes, and other evidences of indebtedness. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board shall determine: *Provided, however,* That the amount of such obligations which may be outstanding at any one time pursuant to this section shall not exceed ten times the paid-in capital and surplus of the Bank.

(b) Purchase and sale by Bank; methods of sale and delivery

The Bank may purchase its own obligations, and may provide for the sale of any such obligations through a fiscal agent or agents, by negotiation, offer, bid, syndicate sale, or otherwise, and may deliver such obligations by book entry, wire transfer, or such other means as may be appropriate.

(c) Obligations as not guaranteed by United States and not to constitute a debt or obligation of United States

Obligations issued under this section shall not be guaranteed by the United States and shall not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than the Bank.

(Pub. L. 95–351, title I, §107, Aug. 20, 1978, 92 Stat. 507; Pub. L. 97–35, title III, §§394(g)(1), 396(d), Aug. 13, 1981, 95 Stat. 437, 440.)

EDITORIAL NOTES

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, §394(g)(1), struck out requirement respecting consultation with the Secretary of the Treasury.

Subsecs. (b) to (d). Pub. L. 97–35, §396(d), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) relating to discretionary authority for issuance to and purchase by Secretary of Treasury.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title III, §394(g)(2), Aug. 13, 1981, 95 Stat. 437, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity

Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see section 396(a) of Pub. L. 97-35, set out as a note under section 3012 of this title.

Amendment by section 396(d) of Pub. L. 97-35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97-35, set out as a note under section 3011 of this title.

§3017a. Class A notes as paid-in capital of the Bank

Only for purposes of section 3017(a) of this title, class A notes shall be deemed to be paid-in capital of the Bank.

(Pub. L. 97-35, title III, §391(b)(1), Aug. 13, 1981, 95 Stat. 434.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the National Consumer Cooperative Bank Act Amendments of 1981 and also as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the National Consumer Cooperative Bank Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 97-35, title III, §391(b)(2), Aug. 13, 1981, 95 Stat. 434, provided that: "This subsection [enacting this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see section 396(a) of Pub. L. 97-35, set out as a note under section 3012 of this title.

§3018. Loans

(a) General requirements for loans and commitments for loans; limitations; allocation of assistance for low-income persons; criteria and factors for making loans, etc.; publication

The Bank may make loans and commitments for loans under this subsection to any organization determined by the Bank to be eligible under the provisions of section 3015 of this title, and may purchase or discount obligations of members of such organizations if the Bank, to the exclusion of all other persons, entities, agencies, or jurisdictions, also determines that the applicant has or will have a sound organizational and financial structure, income in excess of its operating costs and assets in excess of its obligations, and a reasonable expectation of a continuing demand for its production, goods, commodities, or services, or the use of its facilities, so that the loan will be fully repayable in accordance with its terms and conditions. Commencing on October 1, 1985, the Bank shall not make any loan to a cooperative for the purpose of financing the construction, ownership, acquisition, or improvement of any structure used primarily for residential purposes if, after giving effect to such loan, the aggregate amount of all loans outstanding for such purpose would exceed 30 per centum of the gross assets of the Bank. The Board of Directors shall use its best efforts to insure that at the end of each fiscal year of the Bank at least 35 per centum of its outstanding loans are to—

- (1) cooperatives at least a majority of the members of which are low-income persons, and
- (2) other cooperatives, if the proceeds of such loans are directly applied to finance a facility, activity, or service that the Board finds will be used predominantly by low-income persons.

The Board shall adopt and publish in the Federal Register rules defining the term "low-income persons" for purposes of this subsection. The criteria to be applied and the factors to be considered by the Bank in making loans, loan commitments, purchases, discounts, and guarantees shall include an assessment of the impact of the loan on existing small businesses in the eligible organizations'

business territory. The criteria and factors shall be stated in rules of the Bank which shall be published and made available to applicants and, upon request, to any other person or organization.

(b) Repayment requirements; criteria for terms, rates, and charges; advancement of loan proceeds

Loans under this section shall be repayable in not more than forty years and, except for loans with final due date not longer than five years from the date of the loan, shall be amortized as to principal and interest. In setting the terms, rates, and charges, it shall be the objective of the Bank to provide the type of credit needed by eligible borrowers, at the lowest reasonable cost on a sound business basis, taking into account the cost of money to the Bank, necessary reserve and expenses of the Bank, and the technical and other assistance attributable to loans under this section made available by the Bank. The loan terms may provide for interest rates to vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Bank for new loans at such times. The proceeds of a loan under this subsection may be advanced by the borrower to its members or stockholders under circumstances described in the bylaws or rules of the Bank.

(c) Guarantees by Bank; requirements; charges

Subject to section 3012(13) of this title, the Bank may guarantee all or any part of the principal and interest of any loan made by any State or federally chartered lending institution to any borrower if such loan is to an organization that would be an eligible borrower from the Bank for a direct loan and is on terms and conditions (including the rate of interest) which would be permissible terms and conditions for such a direct loan. The Bank may impose a charge for any such guarantee. No loan may be guaranteed by the Bank if the income therefrom to the lender is excluded from such lender's gross income for purposes of chapter 1 of title 26.

(d) Assignment of guaranteed loans; contestability of guarantee; criteria for purchase by Bank of guaranteed loan in lieu of requiring service by lender

Any loan guaranteed under subsection (c) shall be assignable to the extent provided in the contract of guarantee as may be determined by the Bank. The guarantee shall be uncontestable, except for fraud or misrepresentation of which the holder had actual knowledge at the time he acquired the loan. The Bank in lieu of requiring such lender to service such guaranteed loan until final maturity or liquidation, may purchase the loan for the balance of the principal and accrued interest thereon without penalty, if it determines that (1) the liquidation of the loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation, and (2) the loan will be repayable with revision of the loan rates, terms, or payment periods or other conditions not inconsistent with loans made by the Bank under subsection (a) of this section, which revisions the lender or other holder of such guaranteed loan is unwilling to make.

(e) Aggregate amount of commitments to make or guarantee loans

As long as any of the class A stock of the Bank is held by the Secretary of the Treasury, the aggregate amount of commitments by the Bank to make or guarantee loans shall not exceed such amounts as may be specified in annual appropriation Acts.

(Pub. L. 95-351, title I, §108, Aug. 20, 1978, 92 Stat. 508; Pub. L. 97-35, title III, §§394(b), 396(e), Aug. 13, 1981, 95 Stat. 436, 440; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1981—Subsec. (a). Pub. L. 97-35, §394(b), substituted "1985" for "1983".

Subsec. (b). Pub. L. 97-35, §396(e), struck out provisions relating to proceeds from class A and class B stock.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 396(e) of Pub. L. 97-35 effective on day after Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97-35, set out as a note under section 3011 of this title.

§3019. Taxation by State, county, etc., taxing authority; Federal tax status

(a) The Bank, including its franchise, capital, reserves, surplus, mortgages, or other security holdings and income shall be exempt from taxation now or hereafter imposed by any State, county, municipality, or local taxing authority, but any real property held by the Bank shall be subject to any State, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(b) Notwithstanding any other provision of law, for purposes of subchapter T of chapter 1 of title 26—

(1) the Bank shall be treated as a corporation operating on the cooperative basis within the meaning of section 1381(a)(2) of title 26;

(2) the term "patronage dividend", as defined in section 1388(a) of title 26 includes, only as such section applies to the Bank, any patronage refunds in the form of class B or class C stock or allocated surplus that are distributed or set aside by the Bank pursuant to section 3014(i) of this title;

(3) the terms "written notice of allocation" and "qualified written notices of allocation", as defined in sections 1388(b) and (c) of title 26, include (to the extent of par value), only as such sections apply to the Bank, any class B or class C stock distributed by the Bank pursuant to section 3014(i) of this title and shall also include any allocated surplus set aside by the Bank pursuant to section 3014(i) of this title;

(4) patrons of the Bank shall be deemed to have consented under section 1388(c)(2) of title 26 to the inclusion in their incomes of any qualified written notices of allocation received by such patrons from the Bank; and

(5) any amounts required to be included in the incomes of patrons of the Bank with respect to class B or class C stock or allocated surplus shall be treated as earnings from business done by such patrons of the Bank with or for their own patrons.

(Pub. L. 95-351, title I, §109, Aug. 20, 1978, 92 Stat. 509; Pub. L. 97-35, title III, §392(a), Aug. 13, 1981, 95 Stat. 434; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subchapter T of chapter 1 of title 26, referred to in subsec. (b), is set out as section 1381 et seq. of Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1981—Pub. L. 97-35 designated existing provisions as subsec. (a), struck out applicability of Final Government Equity Redemption Date to provisions, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-35, title III, §392(b), Aug. 13, 1981, 95 Stat. 435, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see

section 396(a) of Pub. L. 97-35, set out as a note under section 3012 of this title.

§3020. Quarters and space for principal and other offices

Until the Final Government Equity Redemption Date, space for the principal office and any branch offices of the Bank shall be provided by the General Services Administration. Thereafter, the Bank may lease, construct, or own quarters and provide for the space requirements of its principal and other offices.

(Pub. L. 95-351, title I, §110, Aug. 20, 1978, 92 Stat. 510.)

§3021. Annual report to Congress; contents

The Board of the Bank shall report annually to the appropriate committees of the Congress on the Bank's capital, operations, and financial condition and make recommendations for legislation needed to improve its services.

(Pub. L. 95-351, title I, §111, Aug. 20, 1978, 92 Stat. 510.)

§3022. Authorization of additional appropriations; restrictions on use

In addition to appropriations specifically authorized in this chapter, there are authorized to be appropriated \$2,000,000 for the fiscal year ending September 30, 1979, and for each of the two succeeding fiscal years, ending September 30, 1980, and September 30, 1981, such sums as may be necessary: *Provided*, That none of these appropriated sums shall be used to retire any indebtedness of the Bank incurred pursuant to section 3017 of this title. Any sums so appropriated shall remain available until expended.

(Pub. L. 95-351, title I, §112, Aug. 20, 1978, 92 Stat. 510.)

§3023. Appeal procedures applicable upon denial or restriction of application for assistance

(a) If an application for assistance under this chapter is denied in whole or in part, the applicant shall be informed within thirty days in writing of the reasons for the denial or restriction.

(b) Any applicant for assistance under this chapter receiving notice of denial or restriction of the application may, within thirty days of receipt of such notice, request the Board of Directors to review the application and notice of denial or restriction for a determination of whether the action of the Bank was correctly within the terms of this chapter, the regulations, and the policy of the Board. The Board shall consider the request for review at its next meeting and promptly inform the applicant of its determination and the reasons therefor.

(Pub. L. 95-351, title I, §113, Aug. 20, 1978, 92 Stat. 510.)

§3024. Conflict of interest rules; adoption and publication; requirements

The Board of Directors shall adopt and publish its own conflict of interest rules which shall be no less stringent in effect than the Federal Executive conflict of interest rules contained in Executive Order Numbered 11222 in prohibiting participation or action or the use of inside information for personal advantage on any matter involving a corporation, trust, partnership, or cooperative organization in which a board member, officer, or employee holds a substantial financial interest or

holds a position as board member or senior officer, the activities of which organization might be relevant to, be competitive with, or be inconsistent with the objectives of any bank created under this chapter. These rules shall require—

(1) each nominee for elected membership on the Board established under this chapter to make public and file with the election official before the date of election a statement of his financial interest and position, if any, in such organizations; and

(2) each senior executive officer and appointed member of the Board to file with the appointing officer, before entering that office a statement of his financial interest and position, if any, in such organizations, which shall be available for inspection upon request.

(Pub. L. 95–351, title I, §114, Aug. 20, 1978, 92 Stat. 510; Pub. L. 97–35, title III, §396(f), Aug. 13, 1981, 95 Stat. 440.)

EDITORIAL NOTES

REFERENCES IN TEXT

Executive Order Numbered 11222, referred to in text, which was formerly set out as a note under section 201 of Title 18, Crimes and Criminal Procedure, was revoked by Ex. Ord. No. 12674, §501(a), Apr. 12, 1989, 54 F.R. 15161.

AMENDMENTS

1981—Pub. L. 97–35 struck out provisions authorizing section to remain in effect until the Final Government Equity Redemption Date.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97–35, set out as a note under section 3011 of this title.

§3025. Examination and audit

The Farm Credit Administration and the Government Accountability Office are hereby authorized and directed to examine and audit the Bank. Reports regarding such examinations and audits shall be promptly forwarded to both Houses of the Congress. The Bank shall reimburse the Farm Credit Administration for the costs of any examination or audit conducted by the Farm Credit Administration.

(Pub. L. 95–351, title I, §115, Aug. 20, 1978, 92 Stat. 511; Pub. L. 97–35, title III, §394(a)(1), Aug. 13, 1981, 95 Stat. 436; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

AMENDMENTS

2004—Pub. L. 108–271 substituted "Government Accountability Office" for "General Accounting Office".

1981—Pub. L. 97–35 substituted provisions relating to examination and audit by the Farm Credit Administration and the General Accounting Office, for provisions relating to annual examinations and audits by an agency or instrumentality of the Federal Government designated by the President.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–35, title III, §394(a)(2), Aug. 13, 1981, 95 Stat. 436, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the day after the Final Government Equity Redemption Date [Dec. 31, 1981]." For definition of "Final Government Equity Redemption Date", see

section 396(a) of Pub. L. 97–35, set out as a note under section 3012 of this title.

§3026. Acceleration of the Final Government Equity Redemption Date

(a)(1)(A) The Final Government Equity Redemption Date shall occur on December 31, 1981, or not later than 10 days after the date of the enactment of the first Act providing for appropriations for fiscal year 1982 (other than continuing appropriations) for the Department of Housing and Urban Development and Independent Agencies, whichever occurs later.

(B) Not later than 5 days after the Final Government Equity Redemption Date, the Secretary of the Treasury shall publish a notice in the Federal Register indicating the day on which the Final Government Equity Redemption Date occurred.

(2)(A) Before the Final Government Equity Redemption Date, the Secretary of the Treasury shall purchase all class A stock for which the Congress has appropriated funds.

(B) After the Final Government Equity Redemption Date, the Secretary of the Treasury shall not purchase any class A stock.

(3)(A) On the Final Government Equity Redemption Date, all class A stock held by the Secretary of the Treasury on such date shall be redeemed by the Bank in exchange for class A notes which are issued by the Bank to the Secretary of the Treasury on behalf of the United States and which have a total face value equal to the total par value of the class A stock which is so redeemed, plus any unpaid dividends on such stock.

(B) During the period beginning on the Final Government Equity Redemption Date and ending on December 31, 1990, not less than 30 percent of the revenue derived from the sale of stock by the Bank, other than the sale of class B stock or class C stock, shall be used, upon receipt, to retire class A notes.

(C) After December 31, 1990, the Bank shall maintain a repayment schedule for class A notes which will assure full repayment of all class A notes not later than December 31, 2020. The requirement specified in the previous sentence is in addition to the requirement regarding the redemption of class A notes which is specified in section 3014(c) of this title.

(b)(1) The United States shall not be responsible for any obligation of the Bank which is incurred after the Final Government Equity Redemption Date.

(2) As soon as practicable after August 13, 1981, the Board shall adopt bylaws which will assist in expediting and coordinating the activities which will occur with respect to the Final Government Equity Redemption Date.

(Pub. L. 95–351, title I, §116, as added Pub. L. 97–35, title III, §391(a)(1), Aug. 13, 1981, 95 Stat. 433.)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of the enactment of the first Act providing for appropriations for fiscal year 1982 (other than continuing appropriations) for the Department of Housing and Urban Development and Independent Agencies, referred to in subsec. (a)(1)(A), is Dec. 23, 1981, the date of enactment of Pub. L. 97–101, 95 Stat. 1417, known as the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1982.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 97–35, title III, §391(a)(2), Aug. 13, 1981, 95 Stat. 434, provided that: "The amendment made by paragraph (1) [enacting this section] shall take effect on the date of the enactment of this Act [Aug. 13, 1981]."

FINAL GOVERNMENT EQUITY REDEMPTION DATE ESTABLISHED

Pub. L. 97-101, title V, §501(36), Dec. 23, 1981, 95 Stat. 1440, provided in part that: "the final Government equity redemption date for the National Consumer Cooperative Bank shall occur on December 31, 1981."

SUBCHAPTER II—OFFICE OF SELF-HELP DEVELOPMENT AND TECHNICAL ASSISTANCE

§3041. Establishment; appointment, etc., of Director

(a) There is hereby established within the Bank an Office of Self-Help Development and Technical Assistance (hereinafter the "Office").

(b) The Office shall have a Director who shall be appointed by the President, with the advice and consent of the Senate, and who shall not be a member of the Board. Subject to review by the Board, the Director shall promulgate and publish in the Federal Register policies and procedures governing the operation of the Office.

(Pub. L. 95-351, title II, §201, Aug. 20, 1978, 92 Stat. 511.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

ABOLITION OF OFFICE AND PERFORMANCE OF FUNCTIONS

For abolition of the Office of Self-Help Development and Technical Assistance and performance of the functions by a nonprofit corporation upon the incorporation of the nonprofit corporation, see section 3051 of this title.

§3042. Authorization of appropriations for advances; deposits into separate Account in Bank; availability of amounts

There are hereby authorized to be appropriated to the Office for the purpose of making advances under section 3043 of this title an amount not to exceed \$14,000,000 for fiscal year 1982. Any amounts appropriated to the Office shall be deposited by the Office in a separate account in the Bank (hereinafter the "Account"), and shall remain available until expended. Repayments of capital investment advances made pursuant to section 3043(a) of this title and interest supplement advances made pursuant to section 3043(b) of this title and payments of interest thereon pursuant to section 3043(c) of this title shall also be deposited in the Account. No other funds of the Bank shall be transferred into the Account. The Account shall be used by the Office only as authorized in section 3043 of this title.

(Pub. L. 95-351, title II, §202, Aug. 20, 1978, 92 Stat. 511; Pub. L. 97-35, title III, §395(b)(1), Aug. 13, 1981, 95 Stat. 438.)

EDITORIAL NOTES

AMENDMENTS

1981—Pub. L. 97-35 substituted provisions authorizing appropriations for fiscal year 1982, for provisions authorizing appropriations for the fiscal year ending Sept. 30, 1979, and the next two succeeding fiscal years.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 395(b)(3) of Pub. L. 97-35, set out as a note under section 3014 of this title.

§3043. Advances

(a) Capital investment advances; criteria

The Office may make a capital investment advance to any eligible cooperative, either in conjunction with or without a loan if the Office determines that—

(1)(A) the applicant's initial or supplemental capital requirements exceeds its ability to obtain such capital through a loan under section 3018 of this title or from other sources; or

(B) the membership of the applicant is, or will consist, substantially of low-income persons, as defined by the Board of Directors, or the applicant proposes to undertake to provide specialized goods, services, or facilities to serve their needs; and

(2) the applicant cannot obtain sufficient funds through a loan under section 3018 of this title or otherwise, and the applicant presents a plan which the Office determines will permit the replacement of a capital investment advance out of member equities within a period not to exceed thirty years.

(b) Interest supplement advances; criteria; amount

The Office may make advances to pay all or part of the interest payable to the Bank or any other lender by an eligible cooperative applicant which the Office determines cannot pay a market rate of interest because it sells goods or services to, or provides facilities for the use of, persons of low income: *Provided*, That such advances will not exceed an amount equal to 4 per centum of the principal amount of the indebtedness of such applicant to the Bank or such other lender for any year in which the net income of the cooperative is insufficient to meet scheduled interest payments.

(c) Interest rate applicable to advances

Capital investment advances made by the Office pursuant to subsection (a) and interest supplement advances made by the Office pursuant to subsection (b) shall bear interest at a rate determined by the Board of Directors of the Bank, and the Board of Directors may authorize an interest rate applicable to such advances lower than the rate applicable to loans by the Bank pursuant to section 3018 of this title.

(Pub. L. 95–351, title II, §203, Aug. 20, 1978, 92 Stat. 512; Pub. L. 97–35, title III, §396(g), Aug. 13, 1981, 95 Stat. 440.)

EDITORIAL NOTES

AMENDMENTS

1981—Subsecs. (a), (b). Pub. L. 97–35 struck out references to the Account wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective on the day after the Final Government Equity Redemption Date (Dec. 31, 1981), see section 396(i) of Pub. L. 97–35, set out as a note under section 3011 of this title.

§3044. Services and information for organization, financing, and management of cooperatives; availability; agreements for development and dissemination; funding

The Office shall make available information and services concerning the organization, financing, and management of cooperatives to best achieve the objectives of this chapter and to best provide the means through which various types of goods, services, and facilities can be made available to members and patrons. The Office may enter into agreements with other agencies of Federal, State,

and local governments, colleges and universities, foundations, or other organizations for the development and dissemination of such information, and services described in this subchapter. The Office may make or accept grants or transfer of funds for such purposes.

(Pub. L. 95-351, title II, §204, Aug. 20, 1978, 92 Stat. 512.)

§3045. Investigations and surveys respecting new services, etc., by cooperative not-for-profit organizations

The Office may undertake investigations of new types of services which can more effectively be provided through cooperative not-for-profit organizations and make surveys of areas where the increased use of such organizations will contribute to the economic well-being of the community.

(Pub. L. 95-351, title II, §205, Aug. 20, 1978, 92 Stat. 512.)

§3046. Financial analysis and market surveys at request of eligible cooperative

The Office may, at the request of any eligible cooperative, provide a financial analysis of the applicant's capital structure and needs and its cost of operations, survey the market for the goods or services the cooperative makes or desires to make available to its members or patrons or the users of its facilities.

(Pub. L. 95-351, title II, §206, Aug. 20, 1978, 92 Stat. 513.)

§3047. Programs for training directors and staff of eligible cooperatives, and public education; development and availability; scope and implementation

The Office shall develop and make available, alone or in concert with other organizations, a program for training directors and staff of eligible cooperatives to improve their understanding of their responsibilities; the problems of and solutions for effective and efficient operation of their organizations or of cooperatives in general; and may by any means it deems appropriate, conduct membership studies, provide membership education programs, and programs for informing consumers and the general public of the advantages of cooperative action. Management supervision, review, and consultations shall be available from the Office to any eligible cooperative.

(Pub. L. 95-351, title II, §207, Aug. 20, 1978, 92 Stat. 513.)

§3048. Cooperation with Federal agencies offering programs for consumer cooperatives in disseminating information

The Office shall work closely with all United States Government agencies offering programs for which consumer cooperatives may be eligible to assure that information concerning all such programs is made available to eligible cooperatives.

(Pub. L. 95-351, title II, §208, Aug. 20, 1978, 92 Stat. 513.)

§3049. Authorization of appropriations for administration; availability of amounts

There are authorized to be appropriated to the Office \$2,000,000 for the fiscal year ending September 30, 1979, and for each of the two succeeding fiscal years, such sums as may be necessary for the administration of this subchapter. Any sums so appropriated shall remain available until expended.

(Pub. L. 95-351, title II, §209, Aug. 20, 1978, 92 Stat. 513.)

§3050. Fees for providing technical assistance services; waiver; accounting and availability

The Office may make the technical assistance services under this subchapter available for such fees as it may establish, except that such services as the Office may determine may be made available without charge to eligible cooperatives depending on the nature of the services or on ability to pay. Any fees collected shall be accounted for separately and be available for expenses of the Office.

(Pub. L. 95-351, title II, §210, Aug. 20, 1978, 92 Stat. 513.)

§3051. Nonprofit corporation

(a) Office of Self-Help Development and Technical Assistance abolished; transfer of assets, etc.

(1) Upon the incorporation of the nonprofit corporation described in subsection (b), the Office of Self-Help Development and Technical Assistance is hereby abolished.

(2)(A) If the nonprofit corporation described in subsection (b) agrees to accept the liabilities of the Office, the Bank, notwithstanding any other provision of law, shall transfer all assets, liabilities, and property of the Office to such nonprofit corporation on the day on which such nonprofit corporation is incorporated.

(B) Such assets shall include all sums which are appropriated to the Office by the Congress and all sums which are contained in the Account established pursuant to section 3042 of this title. If any such sums are appropriated after the date on which the transfer described in subparagraph (A) occurs, the Bank shall promptly transfer such sums to such nonprofit corporation.

(b) Establishment; Board of Directors; functions, etc.

(1) As soon as possible after August 13, 1981, the Board shall establish a nonprofit corporation under the laws of the District of Columbia and, notwithstanding the laws of the District of Columbia, name the directors of such nonprofit corporation.

(2) Notwithstanding the laws of the District of Columbia, the Board of Directors of such nonprofit corporation shall—

(A) select an executive director who shall be responsible for the administration of such nonprofit corporation;

(B) set the compensation of such executive director and the other employees of such nonprofit corporation;

(C) promulgate and publish the policies of such nonprofit corporation and make such policies available at all times to eligible cooperatives; and

(D) perform the functions specified in subparagraphs (A) and (C) of paragraph (3).

(3) Such nonprofit corporation shall only perform—

(A) the functions which are authorized to be performed pursuant to sections 3043 through 3048 of this title and section 3050 of this title;

(B) such functions as are necessary to comply with the laws under which it was incorporated in the District of Columbia; and

(C) such functions as are necessary to remain qualified as an organization described in section 501(c)(3) of title 26.

(4) Notwithstanding any other provision of law—

(A) the Bank may provide administrative or staff support to such nonprofit corporation; and

(B) any member of the Board of Directors of the Bank may serve as a member of the Board of Directors of such nonprofit corporation.

(c) Treatment for tax purposes

(1) Notwithstanding any other provision of law, such nonprofit corporation shall be deemed to be, and treated as, qualified as an organization described in section 501(c)(3) of title 26 from the date on which such nonprofit corporation is established under the laws of the District of Columbia until the date on which the Internal Revenue Service makes a final determination on the application which such nonprofit corporation will submit to the Internal Revenue Service seeking status as an organization qualifying under such section.

(2) When performed by such nonprofit corporation, the functions described in subsection (b)(3)(A) shall be deemed to be performed for "charitable purposes" within the meaning of section 501(c)(3) of title 26.

(d) Contributions from the Bank

(1) The Board of Directors of the Bank may make contributions to the nonprofit corporation in such amounts as the Board of Directors of the Bank deems appropriate, except that—

(A) such contributions may be made only out of the Bank's earnings, determined in accordance with generally accepted accounting principles; and

(B) the Bank shall set aside amounts sufficient to satisfy its obligations to the Secretary of the Treasury for payments of principal and interest on class A notes and other debt before making any contributions to such nonprofit corporation.

(2) During any period in which the nonprofit corporation described in subsection (b) is qualified as an organization described in section 501(c)(3) of title 26, contributions made by the Bank pursuant to paragraph (1) shall be treated as charitable contributions within the meaning of section 170(c)(2) of title 26, and may be deducted notwithstanding the provisions of section 170(b)(2) of title 26.

(3) During any period in which the nonprofit corporation described in subsection (b) is qualified as an organization described in section 501(c)(3) of title 26, contributions to such nonprofit corporation by any person shall qualify as charitable contributions, as defined in section 170(c) of title 26, for purposes of the charitable contribution deduction provided for in section 170(a) of title 26, and shall also qualify for the deductions for estate and gift tax purposes provided for in sections 2055 and 2522 of title 26.

(e) Conflict of interest rules

Notwithstanding the laws of the District of Columbia, the Board of Directors of such nonprofit corporation shall adopt and publish its own conflict of interest rules which shall be no less stringent in effect than the conflict of interest provisions adopted by the Board of Directors of the Bank pursuant to section 3024 of this title.

(Pub. L. 95-351, title II, §211, as added Pub. L. 97-35, title III, §395(a), Aug. 13, 1981, 95 Stat. 437; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

EDITORIAL NOTES

AMENDMENTS

1986—Subsecs. (b)(3)(C), (c), (d)(2), (3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

**CHAPTER 32—FOREIGN BANK PARTICIPATION IN DOMESTIC
MARKETS**

Sec.

3101. Definitions.

3102. Establishment of Federal branches and agencies by foreign bank.

- 3103. Interstate banking by foreign banks.
- 3104. Insurance of deposits.
- 3105. Authority of Federal Reserve System.
- 3106. Nonbanking activities of foreign banks.
- 3106a. Compliance with State and Federal laws.
- 3107. Representative offices.
- 3108. Regulation and enforcement.
- 3109. Cooperation with foreign supervisors.
- 3110. Penalties.
- 3111. Criminal penalty.

§3101. Definitions

For the purposes of this chapter—

(1) "agency" means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States;

(2) "Board" means the Board of Governors of the Federal Reserve System;

(3) "branch" means any office or any place of business of a foreign bank located in any State of the United States at which deposits are received;

(4) "Comptroller" means the Comptroller of the Currency;

(5) "Federal agency" means an agency of a foreign bank established and operating under section 3102 of this title;

(6) "Federal branch" means a branch of a foreign bank established and operating under section 3102 of this title;

(7) "foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. For the purposes of this chapter the term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(8) "foreign country" means any country other than the United States, and includes any colony, dependency, or possession of any such country;

(9) "commercial lending company" means any institution, other than a bank or an organization operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], organized under the laws of any State of the United States, or the District of Columbia which maintains credit balances incidental to or arising out of the exercise of banking powers and engages in the business of making commercial loans;

(10) "State" means any State of the United States or the District of Columbia;

(11) "State agency" means an agency of a foreign bank established and operating under the laws of any State;

(12) "State branch" means a branch of a foreign bank established and operating under the laws of any State;

(13) the terms "affiliate," ¹ "bank", "bank holding company", "company", "control", and "subsidiary" have the same meanings assigned to those terms in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and the terms "controlled" and "controlling" shall be construed consistently with the term "control" as defined in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841];

(14) "consolidated" means consolidated in accordance with generally accepted accounting principles in the United States consistently applied;

(15) the term "representative office" means any office of a foreign bank which is located in any

State and is not a Federal branch, Federal agency, State branch, or State agency;

(16) the term "office" means any branch, agency, or representative office; and

(17) the term "State bank supervisor" has the meaning given to such term in section 1813 of this title.

(Pub. L. 95–369, §1(b), Sept. 17, 1978, 92 Stat. 607; Pub. L. 102–242, title II, §202(e), Dec. 19, 1991, 105 Stat. 2290; Pub. L. 106–102, title I, §142(a), Nov. 12, 1999, 113 Stat. 1384.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, known as the International Banking Act of 1978, which enacted this chapter and sections 347d and 611a of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under this section and sections 36, 247, 601, and 611a of this title and formerly set out as notes under sections 36, 247, and 601 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Bank Holding Company Act of 1956, referred to in par. (13), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

1999—Par. (15). Pub. L. 106–102 substituted "or State agency;" for "State agency, or subsidiary of a foreign bank;".

1991—Par. (13). Pub. L. 102–242, §202(e)(1), inserted reference to affiliate after first reference to "the terms".

Pars. (15) to (17). Pub. L. 102–242, §202(e)(2), added pars. (15) to (17).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–242, title II, §201, Dec. 19, 1991, 105 Stat. 2286, provided that: "This subtitle [subtitle A (§§201–215) of title II of Pub. L. 102–242, enacting sections 3109 to 3111 of this title, amending this section and sections 1467a, 1817, 1820, 1842, 2803, 2804, 3102, 3104 to 3108, and 4009 of this title and sections 44, 57a, 1607, 1681s, 1691c, 1692l, and 1693o of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 3102 of this title] may be cited as the 'Foreign Bank Supervision Enhancement Act of 1991'."

SHORT TITLE

Pub. L. 95–369, §1(a), Sept. 17, 1978, 92 Stat. 607, provided that: "This Act [enacting this chapter and sections 347d and 611a of this title, amending sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820 to 1823, 1828, 1829b, 1831b and 1841 of this title, and enacting provisions set out as notes under sections 36, 247, 601, and 611a of this title] may be cited as the 'International Banking Act of 1978'."

FOREIGN CONTROL OF UNITED STATES FINANCIAL INSTITUTIONS

Pub. L. 96–221, title IX, §§901, 902, Mar. 31, 1980, 94 Stat. 192, 193, provided that:

"SEC. 901. For purposes of this title enacting this provision—

"(1) the term 'domestic financial institution' means any bank, mutual savings bank, or savings and loan association organized under the laws of any State or of the United States;

"(2) the term 'foreign person' means any foreign organization or any individual resident in a foreign country or any organization or individual owned or controlled by such an organization or individual; and

"(3) the term 'takeover' means any acquisition of the stock or assets of any domestic financial institution if, after such acquisition, the amount of stock or assets held is 5 per centum or more of the institution's stock or assets.

"SEC. 902. The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board may not approve any application relating to the takeover of any domestic financial institution by a foreign person until July 1, 1980, unless—

"(1) such takeover is necessary to prevent the bankruptcy or insolvency of the domestic financial institution involved;

"(2) the application was initially submitted for filing on or before March 5, 1980;

"(3) the domestic financial institution has deposits of less than \$100,000,000;

"(4) the application relates to a takeover of shares or assets pursuant to a foreign person's intrafirm reorganization of its interests in a domestic financial institution, including specifically any application to establish a bank holding company pursuant to such reorganization;

"(5) the application relates to a takeover of the assets or shares of a domestic financial institution if such assets or shares are owned or controlled by a foreign person; or

"(6) the application relates to the takeover of a domestic financial institution which is a subsidiary of a bank holding company under an order to divest by December 31, 1980."

¹ So in original. The comma probably should follow the quotation marks.

§3102. Establishment of Federal branches and agencies by foreign bank

(a) Establishment and operation of Federal branches and agencies

(1) Initial Federal branch or agency

Except as provided in section 3103 of this title, a foreign bank which engages directly in a banking business outside the United States may, with the approval of the Comptroller, establish one or more Federal branches or agencies in any State in which (1) it is not operating a branch or agency pursuant to State law and (2) the establishment of a branch or agency, as the case may be, by a foreign bank is not prohibited by State law.

(2) Board conditions required to be included

In considering any application for approval under this subsection, the Comptroller of the Currency shall include any condition imposed by the Board under section 3105(d)(5) of this title as a condition for the approval of such application by the agency.

(b) Rules and regulations; rights and privileges; duties and liabilities; exceptions; coordination of examinations

In establishing and operating a Federal branch or agency, a foreign bank shall be subject to such rules, regulations, and orders as the Comptroller considers appropriate to carry out this section, which shall include provisions for service of process and maintenance of branch and agency accounts separate from those of the parent bank. Except as otherwise specifically provided in this chapter or in rules, regulations, or orders adopted by the Comptroller under this section, operations of a foreign bank at a Federal branch or agency shall be conducted with the same rights and privileges as a national bank at the same location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the National Bank Act to a national bank doing business at the same location, except that (1) any limitation or restriction based on the capital stock and surplus of a national bank shall be deemed to refer, as applied to a Federal branch or agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Federal branch or agency the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation; (2) a Federal branch or agency shall not be required to become a member bank, as that term is defined in section 221 of this title; and (3) a Federal agency shall not be required to become an insured bank as that term is defined in section 1813(h) of this title. The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with

examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section.

(c) Application to establish Federal branch or agency; matters considered

In acting on any application to establish a Federal branch or agency, the Comptroller shall take into account the effects of the proposal on competition in the domestic and foreign commerce of the United States, the financial and managerial resources and future prospects of the applicant foreign bank and the branch or agency, and the convenience and needs of the community to be served.

(d) Receipt of deposits and exercising of fiduciary powers at Federal agency prohibited

Notwithstanding any other provision of this section, a foreign bank shall not receive deposits or exercise fiduciary powers at any Federal agency. A foreign bank may, however, maintain at a Federal agency for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers.

(e) Maintenance of Federal branch and Federal agency in same State prohibited

No foreign bank may maintain both a Federal branch and a Federal agency in the same State.

(f) Conversion of foreign bank branch, agency or commercial lending company into Federal branch or agency; approval of Comptroller

Any branch or agency operated by a foreign bank in a State pursuant to State law and any commercial lending company controlled by a foreign bank may be converted into a Federal branch or agency with the approval of the Comptroller. In the event of any conversion pursuant to this subsection, all of the liabilities of such foreign bank previously payable at the State branch or agency, or all of the liabilities of the commercial lending company, shall thereafter be payable by such foreign bank at the branch or agency established under this subsection.

(g) Deposit requirements; asset requirements

(1) Upon the opening of a Federal branch or agency in any State and thereafter, a foreign bank, in addition to any deposit requirements imposed under section 3104 of this title, shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph "Seventh" of section 24 of this title, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State Bank.

(2) The aggregate amount of deposited investment securities (calculated on the basis of principal amount or market value, whichever is lower) and dollar deposits for each branch or agency established and operating under this section shall be not less than the greater of (1) that amount of capital (but not surplus) which would be required of a national bank being organized at this location, or (2) 5 per centum of the total liabilities of such branch or agency, including acceptances, but excluding (A) accrued expenses, and (B) amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank. The Comptroller may require that the assets deposited pursuant to this subsection shall be maintained in such amounts as he may from time to time deem necessary or desirable, for the maintenance of a sound financial condition, the protection of depositors, and the public interest, but such additional amount shall in no event be greater than would be required to conform to generally accepted banking practices as manifested by banks in the area in which the branch or agency is located.

(3) The deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe. So long as it continues business in the ordinary course such foreign bank shall, however, be permitted to collect income on the securities and funds so deposited and from time to time examine and exchange such securities.

(4) Subject to such conditions and requirements as may be prescribed by the Comptroller, each

foreign bank shall hold in each State in which it has a Federal branch or agency, assets of such types and in such amount as the Comptroller may prescribe by general or specific regulation or ruling as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest. In determining compliance with any such prescribed asset requirements, the Comptroller shall give credit to (A) assets required to be maintained pursuant to paragraphs (1) and (2) of this subsection, (B) reserves required to be maintained pursuant to section 3105(a) of this title, and (C) assets pledged, and surety bonds payable, to the Federal Deposit Insurance Corporation to secure the payment of domestic deposits. The Comptroller may prescribe different asset requirements for branches or agencies in different States, in order to ensure competitive equality of Federal branches and agencies with State branches and agencies and domestic banks in those States.

(h) Additional branches or agencies

(1) Approval of agency required

A foreign bank with a Federal branch or agency operating in any State may (A) with the prior approval of the Comptroller establish and operate additional branches or agencies in the State in which such branch or agency is located on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by a national bank if the principal office of such national bank were located at the same place as the initial branch or agency in such State of such foreign bank and (B) change the designation of its initial branch or agency to any other branch or agency subject to the same limitations and restrictions as are applicable to a change in the designation of the principal office of a national bank if such principal office were located at the same place as such initial branch or agency.

(2) Notice to and comment by Board

The Comptroller of the Currency shall provide the Board with notice and an opportunity for comment on any application to establish an additional Federal branch or Federal agency under this subsection.

(i) Termination of authority to operate Federal branch or agency

Authority to operate a Federal branch or agency shall terminate when the parent foreign bank voluntarily relinquishes it or when such parent foreign bank is dissolved or its authority or existence is otherwise terminated or canceled in the country of its organization. If (1) at any time the Comptroller is of the opinion or has reasonable cause to believe that such foreign bank has violated or failed to comply with any of the provisions of this section or any of the rules, regulations, or orders of the Comptroller made pursuant to this section, or (2) a conservator is appointed for such foreign bank or a similar proceeding is initiated in the foreign bank's country of organization, the Comptroller shall have the power, after opportunity for hearing, to revoke the foreign bank's authority to operate a Federal branch or agency. The Comptroller may, in his discretion, deny such opportunity for hearing if he determines such denial to be in the public interest. The Comptroller may restore any such authority upon due proof of compliance with the provisions of this section and the rules, regulations, or orders of the Comptroller made pursuant to this section.

(j) Receivership over assets of foreign bank in United States

(1) Whenever the Comptroller revokes a foreign bank's authority to operate a Federal branch or agency or whenever any creditor of any such foreign bank shall have obtained a judgment against it arising out of a transaction with a Federal branch or agency in any court of record of the United States or any State of the United States and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the Comptroller shall become satisfied that such foreign bank is insolvent, he may, after due consideration of its affairs, in any such case, appoint a receiver who shall take possession of all the property and assets of such foreign bank in the United States and exercise the same rights, privileges, powers, and authority with respect thereto as are now exercised by receivers of national banks appointed by the Comptroller.

(2) In any receivership proceeding ordered pursuant to this subsection (j), whenever there has been paid to each and every depositor and creditor of such foreign bank whose claim or claims shall have been proved or allowed, the full amount of such claims arising out of transactions had by them with any branch or agency of such foreign bank located in any State of the United States, except (A) claims that would not represent an enforceable legal obligation against such branch or agency if such branch or agency were a separate legal entity, and (B) amounts due and other liabilities to other offices or branches or agencies of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, and all expenses of the receivership, the Comptroller or the Federal Deposit Insurance Corporation, where that Corporation has been appointed receiver of the foreign bank, shall turn over the remainder, if any, of the assets and proceeds of such foreign bank to the head office of such foreign bank, or to the duly appointed domiciliary liquidator or receiver of such foreign bank.

(Pub. L. 95-369, §4, Sept. 17, 1978, 92 Stat. 610; Pub. L. 102-242, title II, §§202(b), (c), 203(b), Dec. 19, 1991, 105 Stat. 2290, 2291; Pub. L. 106-569, title XII, §1234, Dec. 27, 2000, 114 Stat. 3037.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (b), see References in Text note set out under section 3101 of this title.

The National Bank Act, referred to in subsec. (b), is act June 3, 1864, ch. 106, 13 Stat. 99, which is classified principally to chapter 2 (§21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

Section 3104 of this title, referred to in subsec. (g)(1), was in the original a reference to section 6 of Pub. L. 95-369, which enacted section 3104 of this title and amended sections 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, and 1831b of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-569 redesignated cls. (2) to (4) as (1) to (3), respectively, and struck out former cl. (1) which read as follows: "the requirements of section 481 of this title shall be met with respect to a Federal branch or agency if it is examined at least once in each calendar year;".

1991—Subsec. (a). Pub. L. 102-242, §202(b), inserted heading, designated existing provisions as par. (1) and inserted heading, and added par. (2).

Subsec. (b). Pub. L. 102-242, §203(b), inserted at end: "The Comptroller of the Currency shall coordinate examinations of Federal branches and agencies of foreign banks with examinations conducted by the Board under section 3105(c)(1) of this title and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board under such section."

Subsec. (h). Pub. L. 102-242, §202(c), amended heading, designated existing provisions as par. (1), inserted par. (1) heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

STUDY AND REPORT ON SUBSIDIARY REQUIREMENTS FOR FOREIGN BANKS

Pub. L. 102-242, title II, §215, Dec. 19, 1991, 105 Stat. 2304, as amended by Pub. L. 102-550, title XVI, §1604(a)(14), Oct. 28, 1992, 106 Stat. 4083, directed Secretary of the Treasury, jointly with Board of Governors of the Federal Reserve System and in consultation with Comptroller of the Currency, Federal Deposit Insurance Corporation, and Attorney General, to conduct a study of whether foreign banks should be required to conduct banking operations in United States through subsidiaries rather than branches and, not later than 1 year after Dec. 19, 1991, to transmit to Congress a report on the results of the study.

§3103. Interstate banking by foreign banks

(a) Interstate branching and agency operations

(1) Federal branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the Comptroller of the Currency of an application, a foreign bank may establish and operate a Federal branch or agency in any State outside the home State of such foreign bank to the extent that the establishment and operation of such branch would be permitted under section 36(g) of this title or section 1831u of this title if the foreign bank were a national bank whose home State is the same State as the home State of the foreign bank.

(2) State branch or agency

Subject to the provisions of this chapter and with the prior written approval by the Board and the appropriate State bank supervisor of an application, a foreign bank may establish and operate a State branch or agency in any State outside the home State of such foreign bank to the extent that such establishment and operation would be permitted under section 1828(d)(4) or 1831u of this title if the foreign bank were a State bank whose home State is the same State as the home State of the foreign bank.

(3) Criteria for determination

In approving an application under paragraph (1) or (2), the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(A) shall apply the standards applicable to the establishment of a foreign bank office in the United States under section 3105(d) of this title;

(B) may not approve an application unless the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency—

(i) determine that the foreign bank's financial resources, including the capital level of the bank, are equivalent to those required for a domestic bank to be approved for branching under section 36 of this title and section 1831u of this title; and

(ii) consult with the Secretary of the Treasury regarding capital equivalency; and

(C) shall apply the same requirements and conditions to which an application for an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(4) Operation

Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch and agency of a foreign bank which is established and operated pursuant to an application approved under this subsection in the same manner and to the same extent such provisions of such section apply to a domestic branch of a national or State bank (as such terms are defined in section 1813 of this title) which resulted from a merger transaction under such section 1831u of this title.

(5) Exclusive authority for additional branches

Except as provided in this section, a foreign bank may not, directly or indirectly, acquire, establish, or operate a branch or agency in any State other than the home State of such bank.

(6) Requirement for a separate subsidiary

If the Board or the Comptroller of the Currency, taking into account differing regulatory or accounting standards, finds that adherence by a foreign bank to capital requirements equivalent to those imposed under section 36 of this title and section 1831u of this title could be verified only if the banking activities of such bank in the United States are carried out in a domestic banking subsidiary within the United States, the Board and (in the case of an application under paragraph (1)) the Comptroller of the Currency may approve an application under paragraph (1) or (2) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.

(7) Additional authority for interstate branches and agencies of foreign banks, upgrades of certain foreign bank agencies and branches

Notwithstanding paragraphs (1) and (2), a foreign bank may—

(A) with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if—

(i) the establishment and operation of such branch or agency is permitted by the State in which the branch or agency is to be established; and

(ii) in the case of a Federal or State branch, the branch receives only such deposits as would be permitted for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

(B) with the approval of the Board and the relevant licensing authority (the Comptroller in the case of a Federal branch or the appropriate State supervisor in the case of a State branch), upgrade an agency, or a branch of the type referred to in subparagraph (A)(ii), located in a State outside the foreign bank's home State, into a Federal or State branch if—

(i) the establishment and operation of such branch is permitted by such State; and

(ii) such agency or branch—

(I) was in operation in such State on the day before September 29, 1994; or

(II) has been in operation in such State for a period of time that meets the State's minimum age requirement permitted under section 1831u(a)(5) of this title.

(8) Continuing requirement for meeting community credit needs after initial interstate entry by acquisition

(A) In general

If a foreign bank acquires a bank or a branch of a bank, in a State in which the foreign bank does not maintain a branch, and such acquired bank is, or is part of, a regulated financial institution (as defined in section 803 of the Community Reinvestment Act of 1977 [12 U.S.C. 2902]), the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] shall continue to apply to each branch of the foreign bank which results from the acquisition as if such branch were a regulated financial institution.

(B) Exception for branch that receives only deposits permissible for an Edge Act corporation

Paragraph (1) shall not apply to any branch that receives only such deposits as are permissible for a corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] to receive.

(9) Home State of domestic bank defined

For purposes of this subsection, the term "home State" means—

(A) with respect to a national bank, the State in which the main office of the bank is located; and

(B) with respect to a State bank, the State by which the bank is chartered.

(b) Continuance of lawful interstate banking operations previously commenced

Unless its authority to do so is lawfully revoked otherwise than pursuant to this section, a foreign bank, notwithstanding any restriction or limitation imposed under subsection (a) of this section, may establish and operate, outside its home State, any State branch, State agency, or bank or commercial lending company subsidiary which commenced lawful operation or for which an application to commence business had been lawfully filed with the appropriate State or Federal authority, as the case may be, on or before July 27, 1978. Notwithstanding subsection (a), a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency, or commercial lending company subsidiary which such bank was operating on the day

before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994.

(c) Determination of home State of foreign bank

For the purposes of this section—

(1) in the case of a foreign bank that has any branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the 1 State of such States which is selected to be the home State by the foreign bank or, in default of any such selection, by the Board; and

(2) in the case of a foreign bank that does not have a branch, agency, subsidiary commercial lending company, or subsidiary bank in more than 1 State, the home State of the foreign bank is the State in which the foreign bank has a branch, agency, subsidiary commercial lending company, or subsidiary bank.

(d) Clarification of branching rules in case of foreign bank with domestic bank subsidiary

In the case of a foreign bank that has a domestic bank subsidiary within the United States—

(1) the fact that such bank controls a domestic bank shall not affect the authority of the foreign bank to establish Federal and State branches or agencies to the extent permitted under subsection (a); and

(2) the fact that the domestic bank is controlled by a foreign bank which has Federal or State branches or agencies in States other than the home State of such domestic bank shall not affect the authority of the domestic bank to establish branches outside the home State of the domestic bank to the extent permitted under section 36(g) of this title or section 1828(d)(4) or 1831u of this title, as the case may be.

(Pub. L. 95–369, §5, Sept. 17, 1978, 92 Stat. 613; Pub. L. 103–328, title I, §§104, 107(f), Sept. 29, 1994, 108 Stat. 2354, 2361; Pub. L. 106–102, title VII, §732, Nov. 12, 1999, 113 Stat. 1478.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (a)(1), (2), see References in Text note set out under section 3101 of this title.

The Community Reinvestment Act of 1977, referred to in subsec. (a)(8)(A), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(7)(A)(ii), (8)(B), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

AMENDMENTS

1999—Subsec. (a)(7). Pub. L. 106–102 amended heading and text of par. (7) generally. Prior to amendment, text read as follows: "Notwithstanding paragraphs (1) and (2), a foreign bank may, with the approval of the Board and the Comptroller of the Currency, establish and operate a Federal branch or Federal agency or, with the approval of the Board and the appropriate State bank supervisor, a State branch or State agency in any State outside the foreign bank's home State if—

"(A) the establishment and operation of a branch or agency is expressly permitted by the State in which the branch or agency is to be established; and

"(B) in the case of a Federal or State branch, the branch receives only such deposits as would be permissible for a corporation organized under section 25A of the Federal Reserve Act."

1994—Subsec. (a). Pub. L. 103–328, §§104(a), 107(f), inserted heading and substituted provisions consisting of pars. (1) to (9) for former provisions relating to limitations on interstate banking by foreign banks.

Subsec. (b). Pub. L. 103–328, §104(b), inserted at end "Notwithstanding subsection (a), a foreign bank may continue to operate, after September 29, 1994, any Federal branch, State branch, Federal agency, State agency,

or commercial lending company subsidiary which such bank was operating on the day before September 29, 1994, to the extent the branch, agency, or subsidiary continues, after September 29, 1994, to engage in operations which were lawful under the laws in effect on the day before September 29, 1994."

Subsec. (c). Pub. L. 103-328, §104(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "For the purposes of this section, the home State of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such States is so determined by election of the foreign bank, or, in default of such election, by the Board."

Subsec. (d). Pub. L. 103-328, §104(c), added subsec. (d).

§3104. Insurance of deposits

(a) Objective

In implementing this section, the Comptroller and the Federal Deposit Insurance Corporation shall each, by affording equal competitive opportunities to foreign and United States banking organizations in their United States operations, ensure that foreign banking organizations do not receive an unfair competitive advantage over United States banking organizations.

(b) Deposits of less than amount equal to the standard maximum deposit insurance amount

No foreign bank may establish or operate a Federal branch which receives deposits of less than an amount equal to the standard maximum deposit insurance amount unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)], or unless the Comptroller determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(c) Deposits required to be insured under State law

(1) After September 17, 1978, no foreign bank may establish a branch, and after one year following such date no foreign bank may operate a branch, in any State in which the deposits of a bank organized and existing under the laws of that State would be required to be insured, unless the branch is an insured branch as defined in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)], or unless the branch will not thereafter accept deposits of less than an amount equal to the standard maximum deposit insurance amount, or unless the Federal Deposit Insurance Corporation determines by order or regulation that the branch is not engaged in domestic retail deposit activities requiring deposit insurance protection, taking account of the size and nature of depositors and deposit accounts.

(2) Notwithstanding the previous paragraph, a branch of a foreign bank in operation on September 17, 1978, which has applied for Federal deposit insurance pursuant to section 5 of the Federal Deposit Insurance Act [12 U.S.C. 1815] by September 17, 1979, and has not had such application denied, may continue to accept domestic retail deposits until January 31, 1980.

(d) Retail deposit-taking by foreign banks

(1) In general

After December 19, 1991, notwithstanding any other provision of this chapter or any provision of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], in order to accept or maintain domestic retail deposit accounts having balances of less than an amount equal to the standard maximum deposit insurance amount, and requiring deposit insurance protection, a foreign bank shall—

(A) establish 1 or more banking subsidiaries in the United States for that purpose; and

(B) obtain Federal deposit insurance for any such subsidiary in accordance with the Federal Deposit Insurance Act.

(2) Exception

Domestic retail deposit accounts with balances of less than an amount equal to the standard

maximum deposit insurance amount that require deposit insurance protection may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

(3) Insured banks in U.S. territories

For purposes of this subsection, the term "foreign bank" does not include any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

(e) Standard maximum deposit insurance amount defined

For purposes of this section, the term "standard maximum deposit insurance amount" means the amount of the maximum amount of deposit insurance as determined under section 11(a)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(1)].

(Pub. L. 95–369, §6, Sept. 17, 1978, 92 Stat. 614; Pub. L. 96–64, Sept. 14, 1979, 93 Stat. 412; Pub. L. 102–242, title II, §214(a), Dec. 19, 1991, 105 Stat. 2303; Pub. L. 102–550, title XVI, §1604(a)(10), (11), Oct. 28, 1992, 106 Stat. 4082, 4083; Pub. L. 102–558, title III, §§302(a), 305, Oct. 28, 1992, 106 Stat. 4224, 4226; Pub. L. 103–328, title I, §107(a), (d), Sept. 29, 1994, 108 Stat. 2358, 2360; Pub. L. 109–173, §2(c)(4), Feb. 15, 2006, 119 Stat. 3602.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsec. (d)(1), see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsec. (d)(1), (3), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

2006—Subsecs. (b), (c)(1), (d)(1), (2). Pub. L. 109–173, §2(c)(4)(A), substituted "an amount equal to the standard maximum deposit insurance amount" for "\$100,000".

Subsec. (e). Pub. L. 109–173, §2(c)(4)(B), added subsec. (e).

1994—Subsecs. (a) to (d). Pub. L. 103–328, §107(a), added subsec. (a) and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

Subsec. (d)(3). Pub. L. 103–328, §107(d), added par. (3).

1992—Subsec. (c). Pub. L. 102–550, §1604(a)(10), struck out the subsec. (c) which was in effect before the subsec. (c) added by Pub. L. 102–242, §214(a)(3), and which amended various other sections of this title.

Subsec. (c)(1). Pub. L. 102–558, §302(a)(1), inserted "domestic retail" before "deposit accounts" and "and requiring deposit insurance protection," after "\$100,000," in introductory provisions. Pub. L. 102–550, §1604(a)(11)(A), which made an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (c)(2). Pub. L. 102–558, §302(a)(2), substituted "Domestic retail deposit" for "Deposit" and inserted "that require deposit insurance protection" after "\$100,000". Pub. L. 102–550, §1604(a)(11)(B), which made an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

1991—Subsec. (b). Pub. L. 102–242, §214(a)(1), (2), redesignated subsec. (b) as (b)(1) and designated last undesignated par. as par. (2).

Subsec. (c). Pub. L. 102–242, §214(a)(3), added subsec. (c).

1979—Subsec. (b). Pub. L. 96–64 inserted second par. which extended time for foreign banks to obtain required deposit insurance with respect to domestic existing branches.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109–173, set out as a

note under section 1785 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Pub. L. 102-558, title III, §302(b), Oct. 28, 1992, 106 Stat. 4224, provided that: "This section, and the amendments made by this section [amending this section], shall have the same effective date as the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102-242]."

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

REGULATIONS

Pub. L. 103-328, title I, §107(b), Sept. 29, 1994, 108 Stat. 2359, provided that:

"(1) IN GENERAL.—Each Federal banking agency, after consultation with the other Federal banking agencies to assure uniformity, shall revise the regulations adopted by such agency under section 6 of the International Banking Act of 1978 [12 U.S.C. 3104] to ensure that the regulations are consistent with the objective set forth in section 6(a) of the International Banking Act of 1978.

"(2) SPECIFIC FACTORS.—In carrying out paragraph (1), each Federal banking agency shall consider whether to permit an uninsured branch of a foreign bank to accept initial deposits of less than \$100,000 only from—

"(A) individuals who are not citizens or residents of the United States at the time of the initial deposit;

"(B) individuals who—

"(i) are not citizens of the United States;

"(ii) are residents of the United States; and

"(iii) are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

"(C) persons to whom the branch or foreign bank has extended credit or provided other nondeposit banking services;

"(D) foreign businesses and large United States businesses;

"(E) foreign governmental units and recognized international organizations; and

"(F) persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds.

"(3) REDUCTION IN REGULATORY DE MINIMIS EXEMPTION.—In carrying out paragraph (1), each Federal banking agency shall limit any exemption which is—

"(A) available under any regulation prescribed pursuant to section 6(d) of the International Banking Act of 1978 [12 U.S.C. 3104(d)] providing for the acceptance of initial deposits of less than \$100,000 by an uninsured branch of a foreign bank; and

"(B) based on a percentage of the average deposits at such branch;
to not more than 1 percent of the average deposits at such branch.

"(4) ADDITIONAL RELEVANT CONSIDERATIONS.—In carrying out paragraph (1), each Federal banking agency shall also consider the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United State [sic] economy.

"(5) DEADLINE FOR PRESCRIBING REVISED REGULATIONS.—Each Federal banking agency—

"(A) shall publish final regulations under paragraph (1) in the Federal Register not later than 12 months after the date of enactment of this Act [Sept. 29, 1994]; and

"(B) may establish reasonable transition rules to facilitate any termination of any deposit-taking activities that were permissible under regulations that were in effect before the date of enactment of this Act.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'Federal banking agency' means—

"(i) the Comptroller of the Currency with respect to Federal branches of foreign banks; and

"(ii) the Federal Deposit Insurance Corporation with respect to State branches of foreign banks;

and

"(B) the term 'uninsured branch' means a branch of a foreign bank that is not an insured branch, as defined in section 3(s)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)(3))."

§3105. Authority of Federal Reserve System

(a) Bank reserves

(1)(A) Except as provided in paragraph (2) of this subsection, sections 371a,¹ 371b, 371b-1,¹ 374, 374a, 461, 464, and 465 of this title shall apply to every Federal branch and Federal agency of a foreign bank in the same manner and to the same extent as if the Federal branch or Federal agency were a member bank as that term is defined in section 221 of this title; but the Board either by general or specific regulation or ruling may waive the minimum and maximum reserve ratios prescribed under sections 461, 463, 464, 465, and 466 of this title and may prescribe any ratio, not more than 22 per centum, for any obligation of any such Federal branch or Federal agency that the Board may deem reasonable and appropriate, taking into consideration the character of business conducted by such institutions and the need to maintain vigorous and fair competition between and among such institutions and member banks. The Board may impose reserve requirements on Federal branches and Federal agencies in such graduated manner as it deems reasonable and appropriate.

(B) After consultation and in cooperation with the State bank supervisory authorities, the Board may make applicable to any State branch or State agency any requirement made applicable to, or which the Board has authority to impose upon, any Federal branch or agency under subparagraph (A) of this paragraph.

(2) A branch or agency shall be subject to this subsection only if (A) its parent foreign bank has total worldwide consolidated bank assets in excess of \$1,000,000,000; (B) its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of \$1,000,000,000; or (C) its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of \$1,000,000,000.

(b) Omitted

(c) Foreign bank examinations and reporting

(1) Examination of branches, agencies, and affiliates

(A) In general

The Board may examine each branch or agency of a foreign bank, each commercial lending company or bank controlled by 1 or more foreign banks or 1 or more foreign companies that control a foreign bank, and other office or affiliate of a foreign bank conducting business in any State.

(B) Coordination of examinations

(i) In general

The Board shall coordinate examinations under this paragraph with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State bank supervisors to the extent such coordination is possible.

(ii) Simultaneous examinations

The Board may request simultaneous examinations of each office of a foreign bank and each affiliate of such bank operating in the United States.

(iii) Avoidance of duplication

In exercising its authority under this paragraph, the Board shall take all reasonable measures to reduce burden and avoid unnecessary duplication of examinations.

(C) On-site examination

Each Federal branch or agency, and each State branch or agency, of a foreign bank shall be subject to on-site examination by an appropriate Federal banking agency or State bank supervisor as frequently as would a national bank or a State bank, respectively, by the appropriate Federal banking agency.

(D) Cost of examinations

The cost of any examination under subparagraph (A) shall be assessed against and collected

from the foreign bank or the foreign company that controls the foreign bank, as the case may be, only to the same extent that fees are collected by the Board for examination of any State member bank.

(2) Reporting requirements

Each branch or agency of a foreign bank, other than a Federal branch or agency, shall be subject to section 335 of this title and the provision requiring the reports of condition contained in section 324 of this title to the same extent and in the same manner as if the branch or agency were a State member bank. In addition to any requirements imposed under section 3102 of this title, each Federal branch and agency shall be subject to section 248(a) of this title and to section 483 of this title to the same extent and in the same manner as if it were a member bank.

(d) Establishment of foreign bank offices in United States

(1) Prior approval required

No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without the prior approval of the Board.

(2) Required standards for approval

Except as provided in paragraph (6), the Board may not approve an application under paragraph (1) unless it determines that—

(A) the foreign bank engages directly in the business of banking outside of the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(B) the foreign bank has furnished to the Board the information it needs to adequately assess the application.

(3) Standards for approval

In acting on any application under paragraph (1), the Board may take into account—

(A) whether the appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch, agency or commercial lending company in the United States by the foreign bank;

(B) the financial and managerial resources of the foreign bank, including the bank's experience and capacity to engage in international banking;

(C) whether the foreign bank has provided the Board with adequate assurances that the bank will make available to the Board such information on the operations or activities of the foreign bank and any affiliate of the bank that the Board deems necessary to determine and enforce compliance with this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and other applicable Federal law;

(D) whether the foreign bank and the United States affiliates of the bank are in compliance with applicable United States law; and

(E) for a foreign bank that presents a risk to the stability of United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.

(4) Factor

In acting on an application under paragraph (1), the Board shall not make the size of the foreign bank the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary to terminate its activities in the United States pursuant to any standard set forth in this chapter.

(5) Establishment of conditions

The Board may impose such conditions on its approval under this subsection as it deems

necessary.

(6) Exception

(A) In general

If the Board is unable to find, under paragraph (2), that a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application by such foreign bank under paragraph (1) if—

- (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and
- (ii) all other factors are consistent with approval.

(B) Other considerations

In deciding whether to use its discretion under subparagraph (A), the Board shall also consider whether the foreign bank has adopted and implements procedures to combat money laundering. The Board may also take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.

(C) Additional conditions

In approving an application under this paragraph, the Board, after requesting and taking into consideration the views of the appropriate State bank supervisor or the Comptroller of the Currency, as the case may be, may impose such conditions or restrictions relating to the activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding, as are considered appropriate. The Board shall coordinate with the appropriate State bank supervisor or the Comptroller of the Currency, as appropriate, in the implementation of such conditions or restrictions.

(D) Modification of conditions

Any condition or restriction imposed by the Board in connection with the approval of an application under authority of this paragraph may be modified or withdrawn.

(7) Time period for Board action

(A) Final action

The Board shall take final action on any application under paragraph (1) not later than 180 days after receipt of the application, except that the Board may extend for an additional 180 days the period within which to take final action on such application after providing notice of, and the reasons for, the extension to the applicant foreign bank and any appropriate State bank supervisor or the Comptroller of the Currency, as appropriate.

(B) Failure to submit information

The Board may deny any application if it does not receive information requested from the applicant foreign bank or appropriate authorities in the home country of the foreign bank in sufficient time to permit the Board to evaluate such information adequately within the time periods for final action set forth in subparagraph (A).

(C) Waiver

A foreign bank may waive the applicability of this paragraph with respect to any application under paragraph (1).

(e) Termination of foreign bank offices in United States

(1) Standards for termination

The Board, after notice and opportunity for hearing and notice to any appropriate State bank supervisor, may order a foreign bank that operates a State branch or agency or commercial lending company subsidiary in the United States to terminate the activities of such branch, agency, or

subsidiary if the Board finds that—

(A)(i) the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(ii) the appropriate authorities in the home country of the foreign bank are not making demonstrable progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis;

(B)(i) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(ii) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; or

(C) for a foreign bank that presents a risk to the stability of the United States financial system, the home country of the foreign bank has not adopted, or made demonstrable progress toward adopting, an appropriate system of financial regulation to mitigate such risk.

However, in making findings under this paragraph, the Board shall not make size the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary to terminate its activities in the United States pursuant to any standard set forth in this chapter.

(2) Discretion to deny hearing

The Board may issue an order under paragraph (1) without providing for an opportunity for a hearing if the Board determines that expeditious action is necessary in order to protect the public interest.

(3) Effective date of termination order

An order issued under paragraph (1) shall take effect before the end of the 120-day period beginning on the date such order is issued unless the Board extends such period.

(4) Compliance with State and Federal law

Any foreign bank required to terminate activities conducted at offices or subsidiaries in the United States pursuant to this subsection shall comply with the requirements of applicable Federal and State law with respect to procedures for the closure or dissolution of such offices or subsidiaries.

(5) Recommendation to agency for termination of a Federal branch or agency

The Board may transmit to the Comptroller of the Currency a recommendation that the license of any Federal branch or Federal agency of a foreign bank be terminated in accordance with section 3102(i) of this title if the Board has reasonable cause to believe that such foreign bank or any affiliate of such foreign bank has engaged in conduct for which the activities of any State branch or agency may be terminated under paragraph (1).

(6) Enforcement of orders

(A) In general

In the case of contumacy of any office or subsidiary of the foreign bank against which—

(i) the Board has issued an order under paragraph (1); or

(ii) the Comptroller of the Currency has issued an order under section 3102(i) of this title,

or a refusal by such office or subsidiary to comply with such order, the Board or the Comptroller of the Currency may invoke the aid of the district court of the United States within

the jurisdiction of which the office or subsidiary is located.

(B) Court order

Any court referred to in subparagraph (A) may issue an order requiring compliance with an order referred to in subparagraph (A).

(7) Criteria relating to foreign supervision

Not later than 1 year after December 19, 1991, the Board, in consultation with the Secretary of the Treasury, shall develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board shall allow reasonable opportunity for public review and comment.

(f) Judicial review

(1) Jurisdiction of United States courts of appeals

Any foreign bank—

(A) whose application under subsection (d) or section 3107(a) of this title has been disapproved by the Board;

(B) against which the Board has issued an order under subsection (e) or section 3107(b) of this title; or

(C) against which the Comptroller of the Currency has issued an order under section 3102(i) of this title,

may obtain a review of such order in the United States court of appeals for any circuit in which such foreign bank operates a branch, agency, or commercial lending company that has been required by such order to terminate its activities, or in the United States Court of Appeals for the District of Columbia Circuit, by filing a petition for review in the court before the end of the 30-day period beginning on the date the order was issued.

(2) Scope of judicial review

Section 706 of title 5 (other than paragraph (2)(F) of such section) shall apply with respect to any review under paragraph (1).

(g) Consultation with State bank supervisor

The Board shall request and consider any views of the appropriate State bank supervisor with respect to any application or action under subsection (d) or (e).

(h) Limitations on powers of State branches and agencies

(1) In general

After the end of the 1-year period beginning on December 19, 1991, a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless—

(A) the Board has determined that such activity is consistent with sound banking practice; and

(B) in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

(2) Single borrower lending limit

A State branch or State agency shall be subject to the same limitations with respect to loans made to a single borrower as are applicable to a Federal branch or Federal agency under section 3102(b) of this title.

(3) Other authority not affected

This section does not limit the authority of the Board or any State supervisory authority to impose more stringent restrictions.

(i) Proceedings related to conviction for money laundering offenses

(1) Notice of intention to issue order

If the Board finds or receives written notice from the Attorney General that—

- (A) any foreign bank which operates a State agency, a State branch which is not an insured branch, or a State commercial lending company subsidiary;
- (B) any State agency;
- (C) any State branch which is not an insured branch; or
- (D) any State commercial lending subsidiary,

has been found guilty of any money laundering offense, the Board shall issue a notice to the agency, branch, or subsidiary of the Board's intention to commence a termination proceeding under subsection (e).

(2) Definitions

For purposes of this subsection—

(A) Insured branch

The term "insured branch" has the meaning given such term in section 3(s) of the Federal Deposit Insurance Act [12 U.S.C. 1813(s)].

(B) Money laundering offense defined

The term "money laundering offense" means any criminal offense under section 1956 or 1957 of title 18 or under section 5322 of title 31.

(j) Study on equivalence of foreign bank capital

Not later than 180 days after December 19, 1991, the Board and the Secretary of the Treasury shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report—

(1) analyzing the capital standards contained in the framework for measurement of capital adequacy established by the Supervisory Committee of the Bank for International Settlements, foreign regulatory capital standards that apply to foreign banks conducting banking operations in the United States, and the relationship of the Basle and foreign standards to risk-based capital and leverage requirements for United States banks; and

(2) establishing guidelines for the adjustments to be used by the Board in converting data on the capital of such foreign banks to the equivalent risk-based capital and leverage requirements for United States banks for purposes of determining whether a foreign bank's capital level is equivalent to that imposed on United States banks for purposes of determinations under this section and sections 3 and 4 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842, 1843].

An update shall be prepared annually explaining any changes in the analysis under paragraph (1) and resulting changes in the guidelines pursuant to paragraph (2).

(k) Management of shell branches

(1) Transactions prohibited

A branch or agency of a foreign bank shall not manage, through an office of the foreign bank which is located outside the United States and is managed or controlled by such branch or agency, any type of activity that a bank organized under the laws of the United States, any State, or the District of Columbia is not permitted to manage at any branch or subsidiary of such bank which is located outside the United States.

(2) Regulations

Any regulations promulgated to carry out this section—

- (A) shall be promulgated in accordance with section 3108 of this title; and
- (B) shall be uniform, to the extent practicable.

(Pub. L. 95–369, §7, Sept. 17, 1978, 92 Stat. 620; Pub. L. 102–242, title II, §§202(a), 203(a), 214(b), Dec. 19, 1991, 105 Stat. 2286, 2291, 2304; Pub. L. 102–550, title XV, §1507, title XVI, §1604(a)(1),

(2), (12), (13), Oct. 28, 1992, 106 Stat. 4056, 4081–4083; Pub. L. 103–328, title I, §107(e)(1), Sept. 29, 1994, 108 Stat. 2360; Pub. L. 104–208, div. A, title II, §2214, Sept. 30, 1996, 110 Stat. 3009–411; Pub. L. 111–203, title I, §173(a), (b), July 21, 2010, 124 Stat. 1440.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 371a of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 111–203, title VI, §627(a)(1), July 21, 2010, 124 Stat. 1640.

Section 371b–1 of this title, referred to in subsec. (a)(1)(A), was repealed by Pub. L. 96–221, title V, §529, Mar. 31, 1980, 94 Stat. 168, subject to a savings provision.

Sections 461, 463, 464, 465, and 466 of this title, referred to in subsec. (a)(1)(A), was in the original "section 19 of the Federal Reserve Act." Provisions of section 19 relating to minimum and maximum reserve ratios are classified to the cited sections. For complete classification of section 19 to the Code, see References in Text note set out under section 461 of this title.

For definition of "this chapter", referred to in subsecs. (d)(3)(C), (4) and (e)(1), see References in Text note set out under section 3101 of this title.

The Bank Holding Company Act of 1956, referred to in subsecs. (d)(3)(C) and (e)(1)(B)(ii), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (e)(1)(B)(ii), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section is comprised of section 7 of Pub. L. 95–369. Subsec. (b) of section 7 of Pub. L. 95–369 enacted section 347d of this title.

AMENDMENTS

2010—Subsec. (d)(3)(E). Pub. L. 111–203, §173(a), added subpar. (E).

Subsec. (e)(1)(C). Pub. L. 111–203, §173(b), added subpar. (C).

1996—Subsec. (c). Pub. L. 104–208, §2214(a)(1), inserted heading.

Subsec. (c)(1)(B)(iii). Pub. L. 104–208, §2214(a)(2), added cl. (iii).

Subsec. (c)(1)(C). Pub. L. 104–208, §2214(a)(3), added subpar. (C) and struck out heading and text of former subpar. (C). Text read as follows: "Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination."

Subsec. (c)(1)(D). Pub. L. 104–208, §2214(a)(4), inserted ", only to the same extent that fees are collected by the Board for examination of any State member bank" before period at end.

Subsec. (d)(2). Pub. L. 104–208, §2214(b)(1), substituted "Except as provided in paragraph (6), the Board" for "The Board".

Subsec. (d)(5). Pub. L. 104–208, §2214(b)(2), substituted "The Board" for "Consistent with the standards for approval in paragraph (2), the Board".

Subsec. (d)(6), (7). Pub. L. 104–208, §2214(b)(3), added pars. (6) and (7).

Subsec. (e)(1)(A). Pub. L. 104–208, §2214(c), designated existing provisions as cl. (i), substituted "and" for "or" at end, and added cl. (ii).

1994—Subsec. (k). Pub. L. 103–328 added subsec. (k).

1992—Subsec. (e)(6)(A). Pub. L. 102–550, §1604(a)(1)(A), substituted "against which—

"(i) the Board has issued an order under paragraph (1); or

"(ii) the Comptroller of the Currency has issued an order under section 3102(i) of this title, or a refusal by such office or subsidiary" for "against which the Board or, in the case of an order issued under section 3102(i) of this title, the Comptroller of the Currency has issued an order under paragraph (1) or a refusal by such office or subsidiary".

Subsec. (e)(6)(B). Pub. L. 102–550, §1604(a)(1)(B), substituted "order referred to in subparagraph (A)" for "order issued under paragraph (1)".

Subsec. (e)(7). Pub. L. 102–550, §1604(a)(2), substituted "public" for "publc".

Subsec. (i). Pub. L. 102–550, §1507, added subsec. (i).

Subsec. (j). Pub. L. 102-550, §1604(a)(12), made technical amendment to directory language of Pub. L. 102-242, §214(b). See 1991 Amendment note below.

Subsec. (j)(1). Pub. L. 102-550, §1604(a)(13), substituted "Supervisory Committee" for "Supervisory committee".

1991—Subsec. (c). Pub. L. 102-242, §203(a), added par. (1), inserted heading for par. (2), and struck out former par. (1) which read as follows: "The Board may make examinations of each branch or agency of a foreign bank, and of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, the cost of which shall be assessed against and paid by such foreign bank or company, as the case may be. The Board shall, insofar as possible, use the reports of examinations made by the Comptroller, the Federal Deposit Insurance Corporation, or the appropriate State bank supervisory authority for the purposes of this subsection."

Subsecs. (d) to (h). Pub. L. 102-242, §202(a), added subsecs. (d) to (h) and struck out former subsec. (d) which read as follows: "On or before two years after September 17, 1978, the Board after consultation with the appropriate State bank supervisory authorities shall report to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the United States Senate its recommendations with respect to the implementation of this chapter, including any recommended requirements such as limitations on loans to affiliates or capital adequacy requirements which should be imposed on foreign banks to carry out the purposes of this chapter. Not later than one hundred and eighty days after September 17, 1978, the Board shall report to such Committees the steps which have been taken to consult and cooperate with State bank supervisory authorities as required by subsection (a)(1)(B) of this section."

Subsec. (j). Pub. L. 102-242, §214(b), as amended by Pub. L. 102-550, §1604(a)(12), added subsec. (j).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-328, title I, §107(e)(2), Sept. 29, 1994, 108 Stat. 2361, provided that: "The amendment made by paragraph (1) [amending this section] shall become effective at the end of the 180-day period beginning on the date of enactment of this Act [Sept. 29, 1994]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1604(a)(1), (2), (12), (13) of Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

MORATORIUM ON EXAMINATION FEES UNDER THIS CHAPTER

Pub. L. 103-328, title I, §115(a), Sept. 29, 1994, 108 Stat. 2368, provided that: "Section 7(c)(1)(D) of the International Banking Act of 1978 [12 U.S.C. 3105(c)(1)(D)] shall not apply with respect to any examination under section 7(c)(1)(A) of such Act which begins before or during the 3-year period beginning on July 25, 1994."

¹ [*See References in Text note below.*](#)

§3106. Nonbanking activities of foreign banks

(a) Applicability of Bank Holding Company Acts

Except as otherwise provided in this section (1) any foreign bank that maintains a branch or agency in a State, (2) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under State law, and (3) any company of which any foreign bank or company referred to in (1) and (2) is a subsidiary shall be subject to the provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to section 1850 of this title and chapter 22 of this title in the same manner and to the same extent that bank holding companies are subject to such provisions.

(b) Ownership or control of shares of nonbanking companies for certain period

Until December 31, 1985, a foreign bank or other company to which subsection (a) applies on September 17, 1978, may retain direct or indirect ownership or control of any voting shares of any nonbanking company in the United States that it owned, controlled, or held with power to vote on September 17, 1978, or engage in any nonbanking activities in the United States in which it was engaged on such date.

(c) Engagement in nonbanking activities after certain period

(1) After December 31, 1985, a foreign bank or other company to which subsection (a) applies on September 17, 1978, or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978, may continue to engage in nonbanking activities in the United States in which directly or through an affiliate it was lawfully engaged on July 26, 1978 (or on a date subsequent to July 26, 1978, in the case of activities carried on as the result of the direct or indirect acquisition, pursuant to a binding written contract entered into on or before July 26, 1978, of another company engaged in such activities at the time of acquisition), and may engage directly or through an affiliate in nonbanking activities in the United States which are covered by an application to engage in such activities which was filed on or before July 26, 1978; except that the Board by order, after opportunity for hearing, may terminate the authority conferred by this subsection on any such foreign bank or company to engage directly or through an affiliate in any activity otherwise permitted by this subsection if it determines having due regard to the purposes of this chapter and the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices in the United States. Notwithstanding subsection (a) of this section, a foreign bank or company referred to in this subsection may retain ownership or control of any voting shares (or, where necessary to prevent dilution of its voting interest, acquire additional voting shares) of any domestically-controlled affiliate covered in 1978 which since July 26, 1978, has engaged in the business of underwriting, distributing, or otherwise buying or selling stocks, bonds, and other securities in the United States, notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities. Except in the case of affiliates described in the preceding sentence, nothing in this subsection shall be construed to authorize any foreign bank or company referred to in this subsection, or any affiliate thereof, to engage in activities authorized by this subsection through the acquisition, pursuant to a contract entered into after July 26, 1978, of any interest in or the assets of a going concern engaged in such activities. Any foreign bank or company that is authorized to engage in any activity pursuant to this subsection but, as a result of action of the Board, is required to terminate such activity may retain the ownership or control of shares in any company carrying on such activity for a period of two years from the date on which its authority was so terminated by the Board. As used in this subsection, the term "affiliate" shall mean any company more than 5 per centum of whose voting shares is directly or indirectly owned or controlled or held with power to vote by the specified foreign bank or company, and the term "domestically-controlled affiliate covered in 1978" shall mean an affiliate organized under the laws of the United States or any State thereof if (i) no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and (ii) no more than 20 per centum of the

number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank. For the purpose of the preceding sentence, the term "persons affiliated with any such foreign bank" shall mean (A) any person who is or was an employee, officer, agent, or director of such foreign bank or who otherwise has or had such a relationship with such foreign bank that would lead such person to represent the interests of such foreign bank, and (B) in the case of any director of such domestically controlled affiliate covered in 1978, any person in favor of whose election as a director votes were cast by less than two-thirds of all shares voting in connection with such election other than shares owned or controlled, directly or indirectly, by any such foreign bank.

(2) The authority conferred by this subsection on a foreign bank or other company shall terminate 2 years after the date on which such foreign bank or other company becomes a "bank holding company" as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)); except that the Board may, upon application of such foreign bank or other company, extend the 2-year period for not more than one year at a time, if, in its judgment, such an extension would not be detrimental to the public interest, but no such extensions shall exceed 3 years in the aggregate.

(3) TERMINATION OF GRANDFATHERED RIGHTS.—

(A) IN GENERAL.—If any foreign bank or foreign company files a declaration under section 4(l)(1)(C) ¹ of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(l)(1)(C)], any authority conferred by this subsection on any foreign bank or company to engage in any activity that the Board has determined to be permissible for financial holding companies under section 4(k) of such Act [12 U.S.C. 1843(k)] shall terminate immediately.

(B) RESTRICTIONS AND REQUIREMENTS AUTHORIZED.—If a foreign bank or company that engages, directly or through an affiliate pursuant to paragraph (1), in an activity that the Board has determined to be permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)] has not filed a declaration with the Board of its status as a financial holding company under such section by the end of the 2-year period beginning on November 12, 1999, the Board, giving due regard to the principle of national treatment and equality of competitive opportunity, may impose such restrictions and requirements on the conduct of such activities by such foreign bank or company as are comparable to those imposed on a financial holding company organized under the laws of the United States, including a requirement to conduct such activities in compliance with any prudential safeguards established under section 1828a of this title.

(d) Construction of terms

Nothing in this section shall be construed to define a branch or agency of a foreign bank or a commercial lending company controlled by a foreign bank or foreign company that controls a foreign bank as a "bank" for the purposes of any provisions of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or section 1850 of this title, except that any such branch, agency or commercial lending company subsidiary shall be deemed a "bank" or "banking subsidiary", as the case may be, for the purposes of applying the prohibitions of chapter 22 of this title and the exemptions provided in sections 4(c)(1), 4(c)(2), 4(c)(3), and 4(c)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(1), (2), (3), and (4)) to any foreign bank or other company to which subsection (a) applies.

(Pub. L. 95–369, §8(a)–(d), Sept. 17, 1978, 92 Stat. 622, 623; Pub. L. 97–320, title VII, §§704, 705, Oct. 15, 1982, 96 Stat. 1539; Pub. L. 100–86, title II, §204, Aug. 10, 1987, 101 Stat. 584; Pub. L. 102–242, title II, §207, Dec. 19, 1991, 105 Stat. 2295; Pub. L. 106–102, title I, §141, Nov. 12, 1999, 113 Stat. 1383.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsecs. (a), (c), and (d), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. Section 4(l)(1)(C) of

the Act was redesignated section 4(l)(1)(D) by Pub. L. 111-203, title VI, §606(a)(2), July 21, 2010, 124 Stat. 1607, and is classified to section 1843(l)(1)(D) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

For definition of "this chapter", referred to in subsec. (c), see References in Text note set out under section 3101 of this title.

AMENDMENTS

1999—Subsec. (c)(3). Pub. L. 106-102 added par. (3).

1991—Subsec. (a). Pub. L. 102-242 substituted "to such provisions" for "thereto, except that any such foreign bank or company shall not by reason of this subsection be deemed a bank holding company for purposes of section 3 of the Bank Holding Company Act of 1956".

1987—Subsec. (c). Pub. L. 100-86 designated existing provisions as par. (1) and added par. (2).

1982—Subsec. (c). Pub. L. 97-320, §704, inserted "or on the date of the establishment of a branch in a State an application for which was filed on or before July 26, 1978" after "September 17, 1978,".

Pub. L. 97-320, §705(a), substituted provision that the term "domestically-controlled affiliate covered in 1978" shall mean an affiliate organized under the laws of the United States or any State thereof if no foreign bank or group of foreign banks acting in concert owns or controls, directly or indirectly, 45 per centum or more of its voting shares, and no more than 20 per centum of the number of directors as established from time to time to constitute the whole board of directors and 20 per centum of the executive officers of such affiliate are persons affiliated with any such foreign bank, for provision that it meant any affiliate the majority of whose voting shares was owned by a company or group of companies organized under the laws of the United States or any State thereof, if it had been under continuous domestic majority-controlling ownership since July 26, 1978, and if a foreign bank or group of foreign banks did not own or control, directly or indirectly, 25 per centum or more of its voting shares, and defined "persons affiliated with any such foreign bank".

Pub. L. 97-320, §705(b), substituted "since July 26, 1978, has engaged" for "engages" before "in the business of underwriting", and inserted ", notwithstanding that such affiliate acquired after July 26, 1978, an interest in, or any or all of the assets of, a going concern, or commences to engage in any new activity or activities" after "and other securities in the United States".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

¹ [*See References in Text note below.*](#)

§3106a. Compliance with State and Federal laws

(1) Every branch or agency of a foreign bank and every commercial lending company controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank shall conduct its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) impose requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws;

(B) prohibit discrimination against any individual or other person on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(C) apply to national banks or State-chartered banks doing business in the State in which such branch or agency or commercial lending company, as the case may be, is doing business.

(2) No application for a branch or agency shall be approved by the Comptroller or by a State bank supervisory authority, as the case may be, unless the entity making the application has agreed to

conduct all of its operations in the United States in full compliance with provisions of any law of the United States or any State thereof which—

(A) impose requirements that protect the rights of consumers in financial transactions, to the extent that the branch, agency, or commercial lending company engages in activities that are subject to such laws;

(B) prohibit discrimination against individuals or other persons on the basis of the race, color, religion, sex, marital status, age, or national origin of (i) such individual or other person or (ii) any officer, director, employee, or creditor of, or any owner of any interest in, such individual or other person; and

(C) apply to national banks or State-chartered banks doing business in the State in which the entity to be established is to do business.

(Pub. L. 95–369, §9(b), as added Pub. L. 95–630, title III, §311, Nov. 10, 1978, 92 Stat. 3678; amended Pub. L. 103–328, title I, §107(c), Sept. 29, 1994, 108 Stat. 2360.)

EDITORIAL NOTES

AMENDMENTS

1994—Par. (1). Pub. L. 103–328, §107(c)(1), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Par. (2). Pub. L. 103–328, §107(c)(2), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3107. Representative offices

(a) Prior approval to establish representative offices

(1) In general

No foreign bank may establish a representative office without the prior approval of the Board.

(2) Standards for approval

In acting on any application under this paragraph to establish a representative office, the Board shall take into account the standards contained in section 3105(d)(2) of this title and may impose any additional requirements that the Board determines to be necessary to carry out the purposes of this chapter.

(b) Termination of representative offices

The Board may order the termination of the activities of a representative office of a foreign bank on the basis of the standards, procedures, and requirements applicable under section 3105(e) of this title with respect to branches and agencies.

(c) Examinations

The Board may make examinations of each representative office of a foreign bank, the cost of which shall be assessed against and paid by such foreign bank. The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this chapter, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], or other applicable Federal banking law.

(d) Compliance with State law

This chapter does not authorize the establishment of a representative office in any State in contravention of State law.

(Pub. L. 95–369, §10, Sept. 17, 1978, 92 Stat. 624; Pub. L. 102–242, title II, §204, Dec. 19, 1991, 105 Stat. 2292; Pub. L. 102–550, title XVI, §1604(a)(4), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 106–102, title I, §142(b), Nov. 12, 1999, 113 Stat. 1384.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a)(2), (c), and (d), see References in Text note set out under section 3101 of this title.

The Bank Holding Company Act of 1956, referred to in subsec. (c), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–102 inserted at end "The Board may also make examinations of any affiliate of a foreign bank conducting business in any State if the Board deems it necessary to determine and enforce compliance with this chapter, the Bank Holding Company Act of 1956, or other applicable Federal banking law."

1992—Subsec. (b). Pub. L. 102–550 substituted "section 3105(e) of this title" for "paragraphs (1), (2), and (3) of section 3105(d) of this title".

1991—Pub. L. 102–242 amended section generally. Prior to amendment, section read as follows:

"(a) Any foreign bank that maintains an office other than a branch or agency in any State shall register with the Secretary of the Treasury in accordance with rules prescribed by him, within one hundred and eighty days after September 17, 1978, or the date on which the office is established, whichever is later.

"(b) This chapter does not authorize the establishment of any such office in any State in contravention of State law."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

MORATORIUM ON EXAMINATION FEES UNDER THIS CHAPTER

Pub. L. 103–328, title I, §115(b), Sept. 29, 1994, 108 Stat. 2368, provided that: "The provision of section 10(c) of the International Banking Act of 1978 [12 U.S.C. 3107(c)] relating to the cost of examinations under such section shall not apply with respect to any examination under such section which begins before or during the 3-year period beginning on July 25, 1994."

§3108. Regulation and enforcement

(a) Rules, regulations and orders

The Comptroller, the Board, and the Federal Deposit Insurance Corporation, are authorized and empowered to issue such rules, regulations, and orders as each of them may deem necessary in order to perform their respective duties and functions under this chapter and to administer and carry out the provisions and purposes of this chapter and prevent evasions thereof.

(b) Enforcement

(1) In general

In addition to any powers, remedies, or sanctions otherwise provided by law, compliance with the requirements imposed under this chapter or any amendment made by this chapter may be enforced under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] by any appropriate Federal banking agency as defined in that Act [12 U.S.C. 1811 et seq.].

(2) Authority to administer oaths; subpoena power

In the course of, or in connection with, an application, examination, investigation, or other proceeding under this chapter, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, as the case may be, any member of the Board or of the Board of Directors of the Corporation, and any designated representative of the Board, Comptroller, or Corporation (including any person designated to conduct any hearing under this chapter) may—

(A) administer oaths and affirmations and take or cause to be taken depositions; and

(B) issue, revoke, quash, or modify any subpoena, including any subpoena requiring the attendance and testimony of a witness or any subpoenas duces tecum.

(3) Administrative aspects of subpoenas

(A) Attendance and production at designated site

The attendance of any witness and the production of any document pursuant to a subpoena under paragraph (2) may be required at the place designated in the subpoena from any place in any State (as defined in section 3(a)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)(3)]) or other place subject to the jurisdiction of the United States.

(B) Service of subpoena

Service of a subpoena issued under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation may by regulation or otherwise provide.

(C) Fees and travel expenses

Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(4) Contumacy or refusal

(A) In general

In the case of contumacy of any person issued a subpoena under this subsection or a refusal by such person to comply with such subpoena, the Board, Comptroller of the Currency, or Federal Deposit Insurance Corporation, or any other party to proceedings in connection with which subpoena was issued may invoke the aid of—

(i) the United States District Court for the District of Columbia, or

(ii) any district court of the United States within the jurisdiction of which the proceeding is being conducted or the witness resides or carries on business.

(B) Court order

Any court referred to in subparagraph (A) may issue an order requiring compliance with a subpoena issued under this subsection.

(5) Expenses and fees

Any court having jurisdiction of any proceeding instituted under this subsection may allow any party to such proceeding such reasonable expenses and attorneys' fees as the court deems just and proper.

(6) Criminal penalty

Any person who willfully fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records in accordance with any subpoena under this subsection shall be fined under title 18, imprisoned not

more than 1 year, or both. Each day during which any such failure or refusal continues shall be treated as a separate offense.

(c) Powers of Federal Reserve Board and Federal Deposit Insurance Corporation

In the case of any provision of the Federal Reserve Act [12 U.S.C. 221 et seq.] to which a foreign bank or branch thereof is subject under this chapter, and which is made applicable to nonmember insured banks by the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], whether by cross-reference to the Federal Reserve Act or by a provision in substantially the same terms in the Federal Deposit Insurance Act, the administration, interpretation, and enforcement of such provision, insofar as it relates to any foreign bank or branch thereof as to which the Board is an appropriate Federal banking agency, are vested in the Board, but where the making of any report to the Board or a Federal Reserve bank is required under any such provision, the Federal Deposit Insurance Corporation may require that a duplicate of any such report be sent directly to it. This subsection shall not be construed to impair any power of the Federal Deposit Insurance Corporation to make regular or special examinations or to require special reports.

(Pub. L. 95–369, §13, Sept. 17, 1978, 92 Stat. 624; Pub. L. 102–242, title II, §209, Dec. 19, 1991, 105 Stat. 2297.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3101 of this title.

The Federal Deposit Insurance Act, referred to in subsecs. (b)(1) and (c), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified principally to chapter 3 (§221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–242 inserted heading, designated existing provisions as par. (1) and inserted par. heading, and added pars. (2) to (6).

§3109. Cooperation with foreign supervisors

(a) Disclosure of supervisory information to foreign supervisors

Notwithstanding any other provision of law, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if the Board, Comptroller, Corporation, or Director determines that such disclosure is appropriate and will not prejudice the interests of the United States.

(b) Requirement of confidentiality

Before making any disclosure of any information to a foreign authority, the Board, Comptroller of the Currency, Federal Deposit Insurance Corporation, and Director of the Office of Thrift Supervision shall obtain, to the extent necessary, the agreement of such foreign authority to maintain the confidentiality of such information to the extent possible under applicable law.

(c) Confidential information received from foreign supervisors

(1) In general

Except as provided in paragraph (3), a Federal banking agency may not be compelled to disclose information received from a foreign regulatory or supervisory authority if—

(A) the Federal banking agency determines that the foreign regulatory or supervisory authority has, in good faith, determined and represented in writing to such Federal banking agency that public disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority; and

(B) the relevant Federal banking agency obtained such information pursuant to—

(i) such procedures as the Federal banking agency may establish for use in connection with the administration and enforcement of Federal banking laws; or

(ii) a memorandum of understanding or other similar arrangement between the Federal banking agency and the foreign regulatory or supervisory authority.

(2) Treatment under title 5

For purposes of section 552 of title 5, this subsection shall be treated as a statute described in subsection (b)(3)(B) of such section.

(3) Savings provision

No provision of this section shall be construed as—

(A) authorizing any Federal banking agency to withhold any information from any duly authorized committee of the House of Representatives or the Senate; or

(B) preventing any Federal banking agency from complying with an order of a court of the United States in an action commenced by the United States or such agency.

(4) Federal banking agency defined

For purposes of this subsection, the term "Federal banking agency" means the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision.

(Pub. L. 95–369, §15, as added Pub. L. 102–242, title II, §206, Dec. 19, 1991, 105 Stat. 2294; amended Pub. L. 109–351, title VII, §709, Oct. 13, 2006, 120 Stat. 1990.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–351 added subsec. (c).

§3110. Penalties

(a) Civil money penalty

(1) In general

Any foreign bank, and any office or subsidiary of a foreign bank, that violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation prescribed or order issued under this chapter, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

(2) Assessment procedures

Any penalty imposed under paragraph (1) may be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), (H), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section), and any such assessments shall be subject to the provisions of such section.

(3) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this section.

(4) Disbursement

All penalties collected under authority of this section shall be deposited into the Treasury.

(5) "Violate" defined

For purposes of this section, the term "violate" includes taking any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(6) Regulations

The Board and the Comptroller of the Currency shall each prescribe regulations establishing such procedures as may be necessary to carry out this section.

(b) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to a foreign bank, or any office or subsidiary of a foreign bank (including a separation caused by the termination of a location in the United States), shall not affect the jurisdiction or authority of the Board or the Comptroller of the Currency to issue any notice or to proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be an institution-affiliated party with respect to such foreign bank or such office or subsidiary of a foreign bank (whether such date occurs on, before, or after December 19, 1991).

(c) Penalty for failure to make reports

(1) First tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such error—

(i) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency under this chapter, within the period of time specified by the agency; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report that is minimally late,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The foreign bank, or the office or subsidiary of a foreign bank, shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

(2) Second tier

Any foreign bank, or any office or subsidiary of a foreign bank, that—

(A) fails to make, submit, or publish such reports or information as may be required under this chapter or under regulations prescribed by the Board or the Comptroller of the Currency pursuant to this chapter, within the time period specified by such agency; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) Third tier

Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board or the Comptroller of the Currency may, in the Board's or Comptroller's discretion, assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such foreign bank, or such office or subsidiary of a foreign bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) Assessment of penalties

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board or the Comptroller of the Currency in the manner provided in subsection (a)(2) (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) Hearing procedure

Section 1818(h) of this title shall apply to any proceeding under this subsection.

(Pub. L. 95-369, §16, as added Pub. L. 102-242, title II, §208, Dec. 19, 1991, 105 Stat. 2295.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in subsecs. (a)(1) and (c)(1)(A)(i), (2)(A), see References in Text note set out under section 3101 of this title.

§3111. Criminal penalty

Whoever, with the intent to deceive, to gain financially, or to cause financial gain or loss to any person, knowingly violates any provision of this chapter or any regulation or order issued by the appropriate Federal banking agency under this chapter shall be imprisoned not more than 5 years or fined not more than \$1,000,000 for each day during which a violation continues, or both.

(Pub. L. 95-369, §17, as added Pub. L. 102-242, title II, §213, Dec. 19, 1991, 105 Stat. 2303.)

EDITORIAL NOTES

REFERENCES IN TEXT

For definition of "this chapter", referred to in text, see References in Text note set out under section 3101 of this title.

CHAPTER 33—DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS

Sec.

- 3201. Definitions.
- 3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited.
- 3203. Dual service of management official of \$2,500,000,000 institution or holding company as management official of unaffiliated \$1,500,000,000 institution or holding company prohibited.
- 3204. Exceptions.
- 3205. Management official in position prior to November 10, 1978.
- 3206. Administration and enforcement.
- 3207. Rules and regulations.
- 3208. Powers available to Attorney General for enforcement.

§3201. Definitions

As used in this chapter—

(1) the term "depository institution" means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a

cooperative bank, an industrial bank, or a credit union;

(2) the term "depository holding company" means a bank holding company as defined in section 1841(a) of this title, a company which would be a bank holding company as defined in section 1841(a) of this title but for the exemption contained in subsection (a)(5)(F) thereof, or a savings and loan holding company as defined in section 1730a(a)(1)(D) ¹ of this title;

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an "affiliate of," or as "affiliated" with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term "subsidiary" is defined in either section 1841(d) of this title in the case of a bank holding company or section 1730a(a)(1)(H) ¹ of this title in the case of a savings and loan holding company; or

(B) more than 25 percent of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 25 percent of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings banks on November 10, 1978, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, and is a bankers' bank, described in Paragraph Seventh of section 24 of this title; or

(E) one of the corporations is a bank, chartered under State law and insured by the Federal Deposit Insurance Corporation, the voting securities of which are held only by persons who are officers of other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by such officers of other banks in excess of 6 per centum of the paid-in capital and 6 per centum of the surplus of such a bank. ²

(4) the term "management official" means an employee or officer with management functions, a director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than \$100,000,000), a trustee of a business organization under the control of trustees, or any person who has a representative or nominee serving in any such capacity:

Provided, That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank is specifically authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons, then, for the purposes of this chapter, such corporator, trustee, director, or other officer shall not be deemed to be a management official of such trust company: *And provided further,* That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank, then, for the purposes of this chapter, such management official shall not be deemed to be a management official of any such savings bank or cooperative bank;

(5) the term "office" used with reference to a depository institution means either a principal office or a branch; and

(6) the term "appropriate Federal depository institutions regulatory agency" means, with respect to any depository institution or depository holding company, the agency referred to in section 3207 of this title in connection with such institution or company.

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, known as the Depository Institution Management Interlocks Act, which enacted this chapter, amended sections 1464, 1730, and 1818 of this title, and enacted provisions set out as a note below. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

Section 1730a of this title, referred to in pars. (2) and (3)(A), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1994—Par. (3)(D). Pub. L. 103–325 substituted "and is a bankers' bank, described in Paragraph Seventh of section 24 of this title; or" for "the voting securities of which are held by other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by any such other bank in excess of 5 per centum of the paid-in capital and 5 per centum of the surplus of such other bank; or".

1988—Par. (3)(B). Pub. L. 100–650, §2, substituted "25 percent" for "50 per centum" in two places.

Par. (4). Pub. L. 100–650, §3, substituted "(including an advisory or honorary director, except in the case of a depository institution with total assets of less than \$100,000,000)" for "(including an advisory or honorary director)".

Par. (6). Pub. L. 100–650, §5(b)(1), added par. (6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–650, §1, Nov. 10, 1988, 102 Stat. 3819, provided that: "This Act [amending sections 3201, 3204, and 3205 of this title] may be referred to as the 'Management Interlocks Revision Act of 1988'."

SHORT TITLE

Pub. L. 95–630, title II, §201, Nov. 10, 1978, 92 Stat. 3672, provided that: "This title [enacting this chapter and amending sections 1464, 1730, and 1818 of this title] may be cited as the 'Depository Institution Management Interlocks Act'."

¹ [*See References in Text note below.*](#)

² [*So in original. The period probably should be a semicolon.*](#)

§3202. Dual service of management official as management official of unaffiliated institution or holding company in same area, town, or village prohibited

A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than \$50,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

(Pub. L. 95–630, title II, §203, Nov. 10, 1978, 92 Stat. 3673; Pub. L. 98–181, title I [title VII, §701(c)], Nov. 30, 1983, 97 Stat. 1267; Pub. L. 109–351, title VI, §610, Oct. 13, 2006, 120 Stat. 1984.)

EDITORIAL NOTES

AMENDMENTS

2006—Par. (1). Pub. L. 109–351 substituted "\$50,000,000" for "\$20,000,000".

1983—Par. (1). Pub. L. 98–181 substituted "primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas" for "standard metropolitan statistical area".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3203. Dual service of management official of \$2,500,000,000 institution or holding company as management official of unaffiliated \$1,500,000,000 institution or holding company prohibited

If a depository institution or a depository holding company has total assets exceeding \$2,500,000,000, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding \$1,500,000,000 or as a management official of any affiliate of such other institution. In order to allow for inflation or market changes, the appropriate Federal depository institutions regulatory agencies may, by regulation, adjust, as necessary, the amount of total assets required for depository institutions or depository holding companies under this section.

(Pub. L. 95–630, title II, §204, Nov. 10, 1978, 92 Stat. 3673; Pub. L. 104–208, div. A, title II, §2210(a), Sept. 30, 1996, 110 Stat. 3009–409.)

EDITORIAL NOTES

AMENDMENTS

1996—Pub. L. 104–208 substituted "\$2,500,000,000" for "\$1,000,000,000" and "\$1,500,000,000" for "\$500,000,000" and inserted at end "In order to allow for inflation or market changes, the appropriate Federal depository institutions regulatory agencies may, by regulation, adjust, as necessary, the amount of total assets required for depository institutions or depository holding companies under this section."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3204. Exceptions

The prohibitions contained in sections 3202 and 3203 of this title shall not apply in the case of any one or more of the following or subsidiary thereof:

(1) A depository institution or depository holding company which has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function.

(2) A corporation operating under section 25 or 25(a) ¹ of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.].

(3) A credit union being served by a management official of another credit union.

(4) A depository institution or depository holding company which does not do business within any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands except as an incident to its activities outside the United States.

(5) A State-chartered savings and loan guaranty corporation.

(6) A Federal Home Loan Bank or any other bank organized specifically to serve depository institutions.

(7) A depository institution or a depository holding company which—

(A) is closed or is in danger of closing, as determined by the appropriate Federal depository institutions regulatory agency in accordance with regulations prescribed by such agency; and

(B) is acquired by another depository institution or depository holding company,

during the 5-year period beginning on the date of the acquisition of the depository institution or depository holding company described in subparagraph (A).

(8)(A) A diversified savings and loan holding company (as defined in section 1730a(a)(1)(F) ¹ of this title) with respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if—

(i) notice of the proposed dual service is given by such diversified savings and loan holding company to—

(I) the appropriate Federal depository institutions regulatory agency for such company; and

(II) the appropriate Federal depository institutions regulatory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director,

not less than 60 days before such dual service is proposed to begin; and

(ii) the proposed dual service is not disapproved by any such appropriate Federal depository institutions regulatory agency before the end of such 60-day period.

(B) Any appropriate Federal depository institutions regulatory agency may disapprove, under subparagraph (A)(ii), a notice of proposed dual service by any individual if such agency finds that—

(i) the dual service cannot be structured or limited so as to preclude the dual service's resulting in a monopoly or substantial lessening of competition in financial services in any part of the United States;

(ii) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.

(C) Any appropriate Federal depository institutions regulatory agency may, at any time after the end of the 60-day period referred to in subparagraph (A), require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstances occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.

(9) Any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act [12 U.S.C. 1467a(a)(1)(A)] or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph shall apply only with respect to service as a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Director of the Office of Thrift Supervision has determined that such service is consistent with the purposes of this chapter and the Home Owners' Loan Act [12 U.S.C. 1461 et seq.].

(Pub. L. 95–630, title II, §205, Nov. 10, 1978, 92 Stat. 3673; Pub. L. 97–320, title IV, §425(d), Oct. 15, 1982, 96 Stat. 1524; Pub. L. 100–650, §§4, 5(a), Nov. 10, 1988, 102 Stat. 3819; Pub. L. 101–73, title VI, §604(a), Aug. 9, 1989, 103 Stat. 410.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 25 of the Federal Reserve Act, referred to in par. (2), is classified to subchapter I (§601 et seq.) of chapter 6 of this title. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Section 1730a of this title, referred to in par. (8)(A), was repealed by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

This chapter, referred to in par. (9), was in the original "this Act" and was translated as reading "this title", meaning title II of Pub. L. 95–630, known as the Depository Institution Management Interlocks Act, to reflect the probable intent of Congress.

The Home Owners' Loan Act, referred to in par. (9), is act June 13, 1933, ch. 64, 48 Stat. 128, which is classified generally to chapter 12 (§1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

AMENDMENTS

1989—Par. (9). Pub. L. 101–73 added par. (9).

1988—Par. (7). Pub. L. 100–650, §4, added par. (7).

Par. (8). Pub. L. 100–650, §5(a), added par. (8).

1982—Par. (2). Pub. L. 97–320 substituted "25(a)" for "25A".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

¹ [*See References in Text note below.*](#)

§3205. Management official in position prior to November 10, 1978

(a) Continuation of service

A person whose service in a position as a management official began prior to November 10, 1978, and who was not immediately prior to November 10, 1978, in violation of section 19 of title 15 is not prohibited by section 3202 or section 3203 of this title from continuing to serve in that position. The appropriate Federal depository institutions regulatory agency may provide a reasonable period of time for compliance with this chapter, not exceeding fifteen months, after any change in circumstances which makes service described in the preceding sentence prohibited by this chapter,

except that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 3202 or section 3203 of this title.

(b) Depository institution and diversified savings and loan holding company

Effective on November 10, 1978, a person who serves as a management official of a company which is not a depository institution or a depository holding company and as a management official of a depository institution or a depository holding company is not prohibited from continuing to serve as a management official of that depository institution or depository holding company as a result of that company which is not a depository institution or depository holding company becoming a diversified savings and loan holding company as that term is defined in section 1730a(a) ¹ of this title.

(Pub. L. 95-630, title II, §206, Nov. 10, 1978, 92 Stat. 3674; Pub. L. 97-110, title III, §302, Dec. 26, 1981, 95 Stat. 1515; Pub. L. 100-650, §§5(b)(2), 6, Nov. 10, 1988, 102 Stat. 3820, 3821; Pub. L. 103-325, title III, §338(a), Sept. 23, 1994, 108 Stat. 2235; Pub. L. 104-208, div. A, title II, §2210(b), Sept. 30, 1996, 110 Stat. 3009-410.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1730a of this title, referred to in subsec. (b), was repealed by Pub. L. 101-73, title IV, §407, Aug. 9, 1989, 103 Stat. 363.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-208, §2210(b)(1), struck out "for a period of, subject to the requirements of subsection (c) of this section, 20 years after November 10, 1978" after "continuing to serve in that position".

Subsec. (b). Pub. L. 104-208, §2210(b)(2), struck out at end "This subsection shall expire, subject to the requirements of subsection (c) of this section, 20 years after November 10, 1978."

Subsec. (c). Pub. L. 104-208, §2210(b)(3), struck out subsec. (c) which related to review of existing management interlocks.

1994—Subsecs. (a), (b). Pub. L. 103-325, §338(a)(1), substituted ", subject to the requirements of subsection (c) of this section, 20 years after November 10, 1978" for "15 years after November 10, 1978".

Subsec. (c). Pub. L. 103-325, §338(a)(2), added subsec. (c).

1988—Subsec. (a). Pub. L. 100-650, §5(b)(2), substituted "depository institutions regulatory agency" for "banking agency (as set forth in section 3207 of this title)".

Pub. L. 100-650, §6, substituted "15 years" for "ten years".

Subsec. (b). Pub. L. 100-650, §6, substituted "15 years" for "ten years".

1981—Pub. L. 97-110 designated existing provisions as subsec. (a), inserted provision that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 3202 or 3203 of this title, and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

¹ [*See References in Text note below.*](#)

§3206. Administration and enforcement

This chapter shall be administered and enforced by—

- (1) the Comptroller of the Currency with respect to national banks and Federal savings

associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, bank holding companies, and savings and loan holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),

(4) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration, and

(5) upon referral by the agencies named in the foregoing paragraphs (1) through (4), the Attorney General shall have the authority to enforce compliance by any person with this chapter.

(Pub. L. 95–630, title II, §207, Nov. 10, 1978, 92 Stat. 3674; Pub. L. 101–73, title VII, §744(r), Aug. 9, 1989, 103 Stat. 440; Pub. L. 108–386, §8(e)(1), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 111–203, title III, §360(1), July 21, 2010, 124 Stat. 1548.)

EDITORIAL NOTES

AMENDMENTS

2010—Par. (1). Pub. L. 111–203, §360(1)(A), inserted "and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)" before the comma.

Par. (2). Pub. L. 111–203, §360(1)(B), substituted ", bank holding companies, and savings and loan holding companies" for ", and bank holding companies".

Par. (3). Pub. L. 111–203, §360(1)(C), substituted "Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)," for "Corporation,".

Par. (4). Pub. L. 111–203, §360(1)(D), (E), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "the Director of the Office of Thrift Supervision with respect to a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and savings and loan holding companies,".

Par. (5). Pub. L. 111–203, §360(1)(E), (F), redesignated par. (6) as (5) and substituted "through (4)" for "through (5)". Former par. (5) redesignated (4).

Par. (6). Pub. L. 111–203, §360(1)(E), redesignated par. (6) as (5). Former par. (5) redesignated (4).

2004—Par. (1). Pub. L. 108–386 struck out "and banks located in the District of Columbia" after "national banks".

1989—Par. (4). Pub. L. 101–73 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3207. Rules and regulations

Regulations to carry out this chapter, including regulations that permit service by a management official that would otherwise be prohibited by section 3202 of this title or section 3203 of this title, if such service would not result in a monopoly or substantial lessening of competition, may be prescribed by—

- (1) the Comptroller of the Currency with respect to national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),
- (2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, bank holding companies, and savings and loan holding companies,
- (3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation),
- (4) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration.

(Pub. L. 95–630, title II, §209, Nov. 10, 1978, 92 Stat. 3675; Pub. L. 103–325, title III, §338(b), Sept. 23, 1994, 108 Stat. 2236; Pub. L. 104–208, div. A, title II, §2210(c), Sept. 30, 1996, 110 Stat. 3009–410; Pub. L. 108–386, §8(e)(2), Oct. 30, 2004, 118 Stat. 2232; Pub. L. 111–203, title III, §360(2), July 21, 2010, 124 Stat. 1549.)

EDITORIAL NOTES

AMENDMENTS

2010—Par. (1). Pub. L. 111–203, §360(2)(A), inserted "and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)" before the comma.

Par. (2). Pub. L. 111–203, §360(2)(B), substituted ", bank holding companies, and savings and loan holding companies" for ", and bank holding companies".

Par. (3). Pub. L. 111–203, §360(2)(C), substituted "Corporation and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation)," for "Corporation,".

Pars. (4), (5). Pub. L. 111–203, §360(2)(D), (E), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: "the Director of the Office of Thrift Supervision with respect to institutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and savings and loan holding companies, and".

2004—Par. (1). Pub. L. 108–386 struck out "and banks located in the District of Columbia" after "national banks".

1996—Pub. L. 104–208 redesignated subsec. (a) as entire section, in introductory provisions, substituted "Regulations" for "Rules and regulations" and inserted ", including regulations that permit service by a management official that would otherwise be prohibited by section 3202 of this title or section 3203 of this title, if such service would not result in a monopoly or substantial lessening of competition," after "chapter", in par. (4), substituted "Director of the Office of Thrift Supervision" for "Federal Home Loan Bank Board" and "Federal Deposit Insurance Corporation" for "Federal Savings and Loan Insurance Corporation", and struck out subsecs. (b) and (c), which related to regulatory standards, and to limited exception for management official consignment program, respectively.

1994—Pub. L. 103–325 designated existing provisions as subsec. (a), inserted heading, struck out ", including rules or regulations which permit service by a management official which would otherwise be prohibited by section 3202 or section 3203 of this title," after "Rules and regulations to carry out this chapter" in introductory provisions, and added subsecs. (b) and (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108–386, set out as notes under section 321 of this title.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3208. Powers available to Attorney General for enforcement

(a) For the purpose of the exercise by the Attorney General of the enforcement functions of the Attorney General under section 3206(6) ¹ of this title, all of the functions and powers of the Attorney General under the Clayton Act [15 U.S.C. 12 et seq.] are available to the Attorney General, irrespective of any jurisdictional tests in the Clayton Act, including the power to take enforcement actions in the same manner as if the violation had been a violation of the Clayton Act.

(b) All of the functions and powers of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice are available to the Attorney General or to such Assistant Attorney General to investigate possible violations under section 3206(6) ¹ of this title in the same manner as if such possible violations were possible violations of the Clayton Act [15 U.S.C. 12 et seq.].

(Pub. L. 95–630, title II, §210, as added Pub. L. 97–320, title IV, §426, Oct. 15, 1982, 96 Stat. 1524; amended Pub. L. 111–203, title III, §360(3), July 21, 2010, 124 Stat. 1549.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3206(6) of this title, referred to in text, was redesignated section 3206(5) by Pub. L. 111–203, title III, §360(1)(E), July 21, 2010, 124 Stat. 1549.

The Clayton Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203 substituted "the enforcement functions of the Attorney General" for "his enforcement functions".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

¹ [*See References in Text note below.*](#)

CHAPTER 34—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

| | |
|-------|---|
| Sec. | |
| 3301. | Declaration of purpose. |
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- 3304. Costs and expenses of Council.
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- 3310. Establishment of Appraisal Subcommittee.
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§3301. Declaration of purpose

It is the purpose of this chapter to establish a Financial Institutions Examination Council which shall prescribe uniform principles and standards for the Federal examination of financial institutions by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration and make recommendations to promote uniformity in the supervision of these financial institutions. The Council's actions shall be designed to promote consistency in such examination and to insure progressive and vigilant supervision.

(Pub. L. 95–630, title X, §1002, Nov. 10, 1978, 92 Stat. 3694.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

SHORT TITLE

Pub. L. 95–630, title X, §1001, Nov. 10, 1978, 92 Stat. 3694, provided that: "This title [enacting this chapter and amending section 67 of former Title 31, Money and Finance] may be cited as the 'Federal Financial Institutions Examination Council Act of 1978'."

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of this title.

§3302. Definitions

As used in this chapter—

(1) the term "Federal financial institutions regulatory agencies" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration;

(2) the term "Council" means the Financial Institutions Examination Council; and

(3) the term "financial institution" means a commercial bank, a savings bank, a trust company, a savings association, a building and loan association, a homestead association, a cooperative bank, or a credit union; ¹

(Pub. L. 95–630, title X, §1003, Nov. 10, 1978, 92 Stat. 3694; Pub. L. 101–73, title VII, §744(a)(1), Aug. 9, 1989, 103 Stat. 438.)

EDITORIAL NOTES

AMENDMENTS

1989—Par. (1). Pub. L. 101–73, §744(a)(1)(A), substituted "Office of Thrift Supervision" for "Federal

Home Loan Bank Board".

Par. (3). Pub. L. 101-73, §744(a)(1)(B), substituted "savings association" for "savings and loan association".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

¹ So in original. The semicolon probably should be a period.

§3303. Financial Institutions Examination Council

(a) Establishment; composition

There is established the Financial Institutions Examination Council which shall consist of—

- (1) the Comptroller of the Currency,
- (2) the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation,
- (3) a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board,
- (4) the Director of the Consumer Financial Protection Bureau,
- (5) the Chairman of the National Credit Union Administration Board, and
- (6) the Chairman of the State Liaison Committee.

(b) Chairmanship

The members of the Council shall select the first chairman of the Council. Thereafter the chairmanship shall rotate among the members of the Council.

(c) Term of office

The term of the Chairman of the Council shall be two years.

(d) Designation of officers and employees

The members of the Council may, from time to time, designate other officers or employees of their respective agencies to carry out their duties on the Council.

(e) Compensation and expenses

Each member of the Council shall serve without additional compensation but shall be entitled to reasonable expenses incurred in carrying out his official duties as such a member.

(Pub. L. 95-630, title X, §1004, Nov. 10, 1978, 92 Stat. 3694; Pub. L. 101-73, title VII, §744(a)(2), Aug. 9, 1989, 103 Stat. 438; Pub. L. 109-351, title VII, §714(a), Oct. 13, 2006, 120 Stat. 1995; Pub. L. 111-203, title X, §1091, July 21, 2010, 124 Stat. 2094.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(4). Pub. L. 111-203 substituted "Director of the Consumer Financial Protection Bureau" for "Director, Office of Thrift Supervision".

2006—Subsec. (a)(4). Pub. L. 109-351, §714(a)(1), substituted "Thrift Supervision," for "Thrift Supervision".

Subsec. (a)(6). Pub. L. 109-351, §714(a)(2), (3), added par. (6).

1989—Subsec. (a)(4). Pub. L. 101-73 substituted "Director, Office of Thrift Supervision" for "Chairman of the Federal Home Loan Bank Board, and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3304. Costs and expenses of Council

One-fifth of the costs and expenses of the Council, including the salaries of its employees, shall be paid by each of the Federal financial institutions regulatory agencies. Annual assessments for such share shall be levied by the Council based upon its projected budget for the year, and additional assessments may be made during the year if necessary.

(Pub. L. 95–630, title X, §1005, Nov. 10, 1978, 92 Stat. 3695.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3305. Functions of Council

(a) Establishment of principles and standards

The Council shall establish uniform principles and standards and report forms for the examination of financial institutions which shall be applied by the Federal financial institutions regulatory agencies.

(b) Making recommendations regarding supervisory matters and adequacy of supervisory tools

(1) The Council shall make recommendations for uniformity in other supervisory matters, such as, but not limited to, classifying loans subject to country risk, identifying financial institutions in need of special supervisory attention, and evaluating the soundness of large loans that are shared by two or more financial institutions. In addition, the Council shall make recommendations regarding the adequacy of supervisory tools for determining the impact of holding company operations on the financial institutions within the holding company and shall consider the ability of supervisory agencies to discover possible fraud or questionable and illegal payments and practices which might occur in the operation of financial institutions or their holding companies.

(2) When a recommendation of the Council is found unacceptable by one or more of the applicable Federal financial institutions regulatory agencies, the agency or agencies shall submit to the Council, within a time period specified by the Council, a written statement of the reasons the recommendation is unacceptable.

(c) Development of uniform reporting system

The Council shall develop uniform reporting systems for federally supervised financial institutions, their holding companies, and nonfinancial institution subsidiaries of such institutions or holding companies. The authority to develop uniform reporting systems shall not restrict or amend the requirements of section 78l(i) of title 15.

(d) Conducting schools for examiners and assistant examiners

The Council shall conduct schools for examiners and assistant examiners employed by the Federal

financial institutions regulatory agencies. Such schools shall be open to enrollment by employees of State financial institutions supervisory agencies and employees of the Federal Housing Finance Board under conditions specified by the Council.

(e) Affect on Federal regulatory agency research and development of new financial institutions supervisory agencies

Nothing in this chapter shall be construed to limit or discourage Federal regulatory agency research and development of new financial institutions supervisory methods and tools, nor to preclude the field testing of any innovation devised by any Federal regulatory agency.

(f) Annual report

Not later than April 1 of each year, the Council shall prepare an annual report covering its activities during the preceding year.

(g) Flood insurance

The Council shall consult with and assist the Federal entities for lending regulation, as such term is defined in section 4121(a) of title 42, in developing and coordinating uniform standards and requirements for use by regulated lending institutions under the national flood insurance program. (Pub. L. 95–630, title X, §1006, Nov. 10, 1978, 92 Stat. 3695; Pub. L. 97–320, title IV, §431, Oct. 15, 1982, 96 Stat. 1527; Pub. L. 101–73, title VII, §744(a)(3), Aug. 9, 1989, 103 Stat. 438; Pub. L. 103–325, title V, §530, Sept. 23, 1994, 108 Stat. 2267.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (g). Pub. L. 103–325 added subsec. (g).

1989—Subsec. (d). Pub. L. 101–73 inserted "and employees of the Federal Housing Finance Board" after "supervisory agencies".

1982—Subsec. (b)(2). Pub. L. 97–320 substituted "unacceptable" for "unaccepted".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

UPDATE OF MANUAL

Pub. L. 116–283, div. F, title LXII, §6209(b), Jan. 1, 2021, 134 Stat. 4574, provided that: "The Financial Institutions Examination Council shall ensure that any manual prepared by the Council is—

"(1) updated to reflect the rulemaking required by subsection (o) section 5318 of title 31, United States Code, as added by subsection (a) of this section; and

"(2) consistent with relevant FinCEN [Financial Crimes Enforcement Network of the Department of the Treasury] and Federal functional regulator guidance, including the December 2018 Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing."

[For definition of "Federal functional regulator" as used in section 6209(b) of Pub. L. 116–283, set out above, see section 6003 of Pub. L. 116–283, set out as a Definitions note under section 5311 of Title 31, Money and Finance.]

STRENGTHENING THE ROLE OF ANTI-MONEY LAUNDERING AND OTHER FINANCIAL TOOLS IN COMBATING HUMAN TRAFFICKING

Pub. L. 116–92, div. F, title LXXI, §7154(c), (d), Dec. 20, 2019, 133 Stat. 2260, 2261, provided that:

"(c) **REQUIRED REVIEW OF PROCEDURES.**—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Federal Financial Institutions Examination Council, in consultation with the Secretary of the Treasury, victims of severe forms of trafficking in persons, advocates of persons at risk of becoming victims of severe forms of trafficking in persons, the United States Advisory Council on Trafficking, civil society organizations, the private sector, and appropriate law enforcement agencies, shall—

"(1) review and enhance training and examination procedures to improve the surveillance capabilities of anti-money laundering programs and programs countering the financing of terrorism to detect human trafficking-related financial transactions;

"(2) review and enhance procedures for referring potential human trafficking cases to the appropriate law enforcement agency; and

"(3) determine, as appropriate, whether requirements for financial institutions and covered financial institutions are sufficient to detect and deter money laundering related to human trafficking.

"(d) LIMITATIONS.—Nothing in this section [amending section 7103 of Title 22, Foreign Relations and Intercourse, and enacting this note and provisions not set out in the Code] shall be construed to—

"(1) grant rulemaking authority to the Interagency Task Force to Monitor and Combat Trafficking; or

"(2) authorize financial institutions to deny services to or violate the privacy of victims of trafficking, victims of severe forms of trafficking, or individuals not responsible for promoting severe forms of trafficking in persons."

REPORT ON CONSISTENT USE OF FINANCIAL TERMINOLOGY

Pub. L. 103–325, title II, §210, Sept. 23, 1994, 108 Stat. 2203, provided that: "Not later than 2 years after the date of enactment of this Act [Sept. 23, 1994], the Financial Institutions Examination Council shall report to the Congress on its recommendations for the use of consistent financial terminology by depository institutions for small business loans or leases of personal property which are sold for the creation of small business related securities (as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(53)(A)])."

EXAMINATION IMPROVEMENT PROGRAM

Pub. L. 102–242, title I, §111(d), Dec. 19, 1991, 105 Stat. 2241, provided that:

"(1) IN GENERAL.—The appropriate Federal banking agencies, acting through the Federal Financial Institutions Examination Council, shall each establish a comparable examination improvement program that meets the requirements of paragraph (2).

"(2) REQUIREMENTS.—An examination improvement program meets the requirements of this paragraph if, under the program, the agency is required—

"(A) to periodically review the organization and training of the staff of the agency who are responsible for conducting examinations of insured depository institutions and to make such improvements as the agency determines to be appropriate to ensure frequent, objective, and thorough examinations of such institutions; and

"(B) to increase the number of examiners, supervisors, and other individuals employed by the agency in connection with conducting or supervising examinations of insured depository institutions to the extent necessary to ensure frequent, objective, and thorough examinations of such institutions."

STUDY ON REGULATORY BURDEN

Pub. L. 102–242, title II, §221, Dec. 19, 1991, 105 Stat. 2305, required the Federal Financial Institutions Examination Council, by 1 year after Dec. 19, 1991, and in consultation with individuals representing insured depository institutions, consumers, community groups, and other interested parties, to undertake a comprehensive study of the regulatory burden on insured depository institutions of compliance with Federal banking agencies and their regulations and policies, and report to Congress on any revisions of such policies, procedures, and requirements that could reduce unnecessary burdens on insured depository institutions.

STUDY AND REPORT ASSESSING FEASIBILITY AND USEFULNESS OF DEPOSITORY INSTITUTIONS MAKING SMALL BUSINESS LOANS TO COMPILE AND DISCLOSE LOAN INFORMATION

Pub. L. 96–399, title III, §340(d), Oct. 8, 1980, 94 Stat. 1659, directed Federal Financial Institutions Examination Council, in consultation with Administrator of Small Business Administration, to conduct a study to assess feasibility and usefulness of requiring depository institutions which make small business loans to compile and publicly disclose information regarding such loans, and directed Council to submit a report on results of such study, together with recommendations, to Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Banking, Finance and Urban Affairs not later than Mar. 1, 1981.

EVALUATION AND REPORT ON FEASIBILITY AND DESIRABILITY OF ESTABLISHING A UNIFIED SYSTEM FOR ENFORCING FAIR LENDING LAWS AND REGULATIONS

Pub. L. 96–399, title III, §340(e), Oct. 8, 1980, 94 Stat. 1659, directed Federal Financial Institutions Examination Council to transmit a report to Congress not later than Sept. 30, 1982, on feasibility and

desirability of establishing a unified system for enforcing fair lending laws and regulations, implementing Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], and satisfying public disclosure purposes of Home Mortgage Disclosure Act of 1975 [12 U.S.C. 2801 et seq.], such report to evaluate status and effectiveness of data collection and analysis systems of such agencies involving fair lending and community reinvestment, and to outline possible specific timetables for implementing such a unified system.

§3306. State liaison

To encourage the application of uniform examination principles and standards by State and Federal supervisory agencies, the Council shall establish a liaison committee composed of five representatives of State agencies which supervise financial institutions which shall meet at least twice a year with the Council. Members of the liaison committee shall receive a reasonable allowance for necessary expenses incurred in attending meetings. Members of the Liaison Committee shall elect a chairperson from among the members serving on the committee.

(Pub. L. 95–630, title X, §1007, Nov. 10, 1978, 92 Stat. 3696; Pub. L. 109–351, title VII, §714(b), Oct. 13, 2006, 120 Stat. 1995.)

EDITORIAL NOTES

AMENDMENTS

2006—Pub. L. 109–351 inserted at end "Members of the Liaison Committee shall elect a chairperson from among the members serving on the committee."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3307. Administration

(a) Authority of Chairman of Council

The Chairman of the Council is authorized to carry out and to delegate the authority to carry out the internal administration of the Council, including the appointment and supervision of employees and the distribution of business among members, employees, and administrative units.

(b) Use of personnel, services, and facilities of Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks

in ¹ addition to any other authority conferred upon it by this chapter, in carrying out its functions under this chapter, the Council may utilize, with their consent and to the extent practical, the personnel, services, and facilities of the Federal financial institutions regulatory agencies, Federal Reserve banks, and Federal Home Loan Banks, with or without reimbursement therefor.

(c) Compensation, authority, and duties of officers and employees; experts and consultants

In addition, the Council may—

(1) subject to the provisions of title 5 relating to the competitive service, classification, and General Schedule pay rates, appoint and fix the compensation of such officers and employees as are necessary to carry out the provisions of this chapter, and to prescribe the authority and duties of such officers and employees; and

(2) obtain the services of such experts and consultants as are necessary to carry out the provisions of this chapter.

(Pub. L. 95–630, title X, §1008, Nov. 10, 1978, 92 Stat. 3696.)

EDITORIAL NOTES

REFERENCES IN TEXT

The provisions of title 5 relating to the competitive service, referred to in subsec. (c), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The provisions of title 5 relating to classification, referred to in subsec. (c), are classified generally to chapter 51 (§5101 et seq.) and to subchapter III (§5331 et seq.) of chapter 53 of Title 5.

The provisions of title 5 relating to General Schedule pay rates, referred to in subsec. (c), are set out under section 5332 of Title 5.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

¹ So in original. Probably should be capitalized.

§3308. Access to books, accounts, records, etc., by Council

For the purpose of carrying out this chapter, the Council shall have access to all books, accounts, records, reports, files, memorandums, papers, things, and property belonging to or in use by Federal financial institutions regulatory agencies, including reports of examination of financial institutions or their holding companies from whatever source, together with workpapers and correspondence files related to such reports, whether or not a part of the report, and all without any deletions.

(Pub. L. 95-630, title X, §1009, Nov. 10, 1978, 92 Stat. 3696.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§3309. Risk management training

(a) Seminars

The Council shall develop and administer training seminars in risk management for its employees and the employees of insured financial institutions.

(b) Study of risk management training program

Not later than end of the 1-year period beginning on August 9, 1989, the Council shall—

(1) conduct a study on the feasibility and appropriateness of establishing a formalized risk management training program designed to lead to the certification of Risk Management Analysts; and

(2) report to the Congress the results of such study.

(Pub. L. 95-630, title X, §1009A, as added Pub. L. 101-73, title XII, §1218, Aug. 9, 1989, 103 Stat. 546.)

§3310. Establishment of Appraisal Subcommittee

There shall be within the Council a subcommittee to be known as the "Appraisal Subcommittee", which shall consist of the designees of the heads of the Federal financial institutions regulatory agencies, the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency. Each such designee shall be a person who has demonstrated knowledge and competence concerning the appraisal profession. At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.

(Pub. L. 95–630, title X, §1011, as added Pub. L. 101–73, title XI, §1102, Aug. 9, 1989, 103 Stat. 511; amended Pub. L. 111–203, title XIV, §1473(s), July 21, 2010, 124 Stat. 2199.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 inserted ", the Bureau of Consumer Financial Protection, and the Federal Housing Finance Agency" after "agencies" and "At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession." at the end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§3311. Required review of regulations

(a) In general

Not less frequently than once every 10 years, the Council and each appropriate Federal banking agency represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such appropriate Federal banking agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

(b) Process

In conducting the review under subsection (a), the Council or the appropriate Federal banking agency shall—

(1) categorize the regulations described in subsection (a) by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council, or the appropriate Federal banking agency); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) Complete review

The Council or the appropriate Federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) is conducted with respect to all regulations described in subsection (a) not less frequently than once every 10 years.

(d) Regulatory response

The Council or the appropriate Federal banking agency shall—

(1) publish in the Federal Register a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and

(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) Report to Congress

Not later than 30 days after carrying out subsection (d)(1), the Council shall submit to the Congress a report, which shall include—

(1) a summary of any significant issues raised by public comments received by the Council and the appropriate Federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate Federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

(Pub. L. 104–208, div. A, title II, §2222, Sept. 30, 1996, 110 Stat. 3009–414.)

EDITORIAL NOTES

CODIFICATION

Section enacted as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Federal Financial Institutions Examination Council Act of 1978 which comprises this chapter.

CHAPTER 34A—APPRAISAL SUBCOMMITTEE OF FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Sec.

- 3331. Purpose.
- 3332. Functions of Appraisal Subcommittee.
- 3333. Chairperson of Appraisal Subcommittee; term of Chairperson; meetings.
- 3334. Officers and staff.
- 3335. Powers of Appraisal Subcommittee.
- 3336. Procedures for establishing appraisal standards and requiring use of certified and licensed appraisers.
- 3337. Startup funding.
- 3338. Roster of State certified or licensed appraisers; authority to collect and transmit fees.
- 3339. Functions of Federal financial institutions regulatory agencies relating to appraisal standards.
- 3340. Time for proposal and adoption of standards.
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- 3342. Transactions requiring services of State certified appraiser.
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- 3344. Time for proposal and adoption of rules.
- 3345. Certification and licensing requirements.
- 3346. Establishment of State appraiser certifying and licensing agencies.
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- 3348. Recognition of State certified and licensed appraisers for purposes of this chapter.
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- 3350. Definitions.
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- 3352. Emergency exceptions for disaster areas.
- 3353. Appraisal management company minimum requirements.
- 3354. Automated valuation models used to estimate collateral value for mortgage lending purposes.

- 3355. Broker price opinions.
- 3356. Exemption from appraisals of real estate located in rural areas.

§3331. Purpose

The purpose of this chapter is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

(Pub. L. 101–73, title XI, §1101, Aug. 9, 1989, 103 Stat. 511.)

§3332. Functions of Appraisal Subcommittee

(a) In general

The Appraisal Subcommittee shall—

(1) monitor the requirements established by States—

(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

(B) for the registration and supervision of the operations and activities of an appraisal management company;

(2) monitor the requirements established by the Federal financial institutions regulatory agencies with respect to—

(A) appraisal standards for federally related transactions under their jurisdiction, and

(B) determinations as to which federally related transactions under their jurisdiction require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) maintain a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions; and ¹

(4) Omitted

(5) transmit an annual report to the Congress not later than June 15 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.²

(6) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency or are operating subsidiaries of a Federally regulated financial institution.

(b) Monitoring and reviewing foundation

The Appraisal Subcommittee shall monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation.

(Pub. L. 101–73, title XI, §1103, Aug. 9, 1989, 103 Stat. 512; Pub. L. 111–203, title III, §367(6), title XIV, §1473(b), (f)(1), July 21, 2010, 124 Stat. 1557, 2190, 2191.)

EDITORIAL NOTES

CODIFICATION

Paragraph (4) of subsection (a), which required the Appraisal Subcommittee to submit an annual report to Congress on the manner in which assigned functions were carried out, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 170 of House Document No. 103–7.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §1473(f)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "monitor the requirements established by States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility;"

Subsec. (a)(2). Pub. L. 111–203, §367(6), struck out "and the Resolution Trust Corporation" after "agencies" in introductory provisions.

Subsec. (a)(5). Pub. L. 111–203, §1473(b), added par. (5).

Subsec. (a)(6). Pub. L. 111–203, §1473(f)(1)(B), added par. (6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 367(6) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 1473(b), (f)(1), of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

¹ *So in original. The word "and" probably should not appear.*

² *So in original. Probably should be "compliance; and".*

§3333. Chairperson of Appraisal Subcommittee; term of Chairperson; meetings

(a) Chairperson

The Council shall select the Chairperson of the subcommittee. The term of the Chairperson shall be 2 years.

(b) Meetings; quorum; voting

The Appraisal Subcommittee shall meet in public session after notice in the Federal Register, but may close certain portions of these meetings related to personnel and review of preliminary State audit reports, at the call of the Chairperson or a majority of its members when there is business to be conducted. A majority of members of the Appraisal Subcommittee shall constitute a quorum but 2 or more members may hold hearings. Decisions of the Appraisal Subcommittee shall be made by the vote of a majority of its members. The subject matter discussed in any closed or executive session shall be described in the Federal Register notice of the meeting.

(Pub. L. 101–73, title XI, §1104, Aug. 9, 1989, 103 Stat. 512; Pub. L. 111–203, title XIV, §1473(c), July 21, 2010, 124 Stat. 2191.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted "in public session after notice in the Federal Register, but may close certain portions of these meetings related to personnel and review of preliminary State audit reports," after "shall meet" and "The subject matter discussed in any closed or executive session shall be described in the Federal Register notice of the meeting." at the end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§3334. Officers and staff

The Chairperson of the Appraisal Subcommittee shall appoint such officers and staff as may be necessary to carry out the functions of this chapter consistent with the appointment and compensation practices of the Council.

(Pub. L. 101–73, title XI, §1105, Aug. 9, 1989, 103 Stat. 512.)

§3335. Powers of Appraisal Subcommittee

The Appraisal Subcommittee may, for the purpose of carrying out this chapter, establish advisory committees, hold hearings prescribe ¹ regulations in accordance with chapter 5 of title 5 (commonly referred to as the Administrative Procedures Act) after notice and opportunity for comment,,² sit and act at times and places, take testimony, receive evidence, provide information, and perform research, as the Appraisal Subcommittee considers appropriate. Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this chapter) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations.

(Pub. L. 101–73, title XI, §1106, Aug. 9, 1989, 103 Stat. 512; Pub. L. 111–203, title XIV, §1473(d), July 21, 2010, 124 Stat. 2191.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title XI of Pub. L. 101–73, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

AMENDMENTS

2010—Pub. L. 111–203 inserted "prescribe regulations in accordance with chapter 5 of title 5 (commonly referred to as the Administrative Procedures Act) after notice and opportunity for comment," after "hold hearings" and "Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this chapter) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies, and hold meetings as necessary to support the development of regulations." at the end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

¹ *So in original. Probably should be preceded by a comma.*

² *So in original.*

§3336. Procedures for establishing appraisal standards and requiring use of certified and licensed appraisers

Appraisal standards and requirements for using State certified and licensed appraisers in federally related transactions pursuant to this chapter shall be prescribed in accordance with procedures set forth in section 553 of title 5, including the publication of notice and receipt of written comments or the holding of public hearings with respect to any standards or requirements proposed to be established.

(Pub. L. 101-73, title XI, §1107, Aug. 9, 1989, 103 Stat. 513.)

§3337. Startup funding

(a) In general

For purposes of this chapter, the Secretary of the Treasury shall pay to the Appraisal Subcommittee a one-time payment of \$5,000,000 on August 9, 1989. Thereafter, expenses of the subcommittee shall be funded through the collection of registry fees from certain certified and licensed appraisers pursuant to section 3338 of this title or, if required, pursuant to section 3351(b) ¹ of this title.

(b) Additional funds

Except as provided in section 3351(b) ¹ of this title, funds in addition to the funds provided under subsection (a) may be made available to the Appraisal Subcommittee only if authorized and appropriated by law.

(c) Repayment of Treasury loan

Not later than September 30, 1998, the Appraisal Subcommittee shall repay to the Secretary of the Treasury the unpaid portion of the \$5,000,000 paid to the Appraisal Subcommittee pursuant to this section.

(Pub. L. 101-73, title XI, §1108, Aug. 9, 1989, 103 Stat. 513; Pub. L. 104-208, div. A, title II, §2212, Sept. 30, 1996, 110 Stat. 3009-411.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3351(b) of this title, referred to in text, was redesignated section 3351(c) of this title by Pub. L. 103-325, title III, §315(1), Sept. 23, 1994, 108 Stat. 2222.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-208 added subsec. (c).

¹ *See References in Text note below.*

§3338. Roster of State certified or licensed appraisers; authority to collect and transmit fees

(a) In general

Each State with an appraiser certifying and licensing agency whose certifications and licenses comply with this chapter, shall—

(1) transmit to the Appraisal Subcommittee, no less than annually, a roster listing individuals who have received a State certification or license in accordance with this chapter;

(2) transmit reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including investigations initiated and disciplinary actions taken; and

(4) collect—

(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this chapter or operates as a subsidiary of a federally regulated financial institution, an annual registry fee of—

(i) in the case of such a company that has been in existence for more than a year, \$25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this chapter; and

(ii) in the case of such a company that has not been in existence for more than a year, \$25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee's functions under this chapter.

Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of \$80 per annum, as necessary to carry out its functions under this chapter. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.

(b) Use of amounts appropriated or collected

Amounts appropriated for or collected by the Appraisal Subcommittee under this section shall be used—

(1) to maintain a registry of individuals who are qualified and eligible to perform appraisals in connection with federally related transactions;

(2) to support its activities under this chapter;

(3) to reimburse the general fund of the Treasury for amounts appropriated to and expended by the Appraisal Subcommittee during the 24-month startup period following August 9, 1989;

(4) to make grants in such amounts as it deems appropriate to the Appraisal Foundation, to help defray those costs of the foundation relating to the activities of its Appraisal Standards and Appraiser Qualification Boards;

(5) to make grants to State appraiser certifying and licensing agencies, in accordance with policies to be developed by the Appraisal Subcommittee, to support the efforts of such agencies to comply with this chapter, including—

(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.

(Pub. L. 101–73, title XI, §1109, Aug. 9, 1989, 103 Stat. 513; Pub. L. 111–203, title XIV, §1473(g), (h)(1), (i), July 21, 2010, 124 Stat. 2194, 2195.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(5), was in the original "this title", meaning title XI of Pub. L. 101–73, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

CODIFICATION

Pub. L. 111–203, §1473(i), which amended this section, also enacted provisions set out as a note below.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1473(h)(1)(B), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: "Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees, up to a maximum of \$50 per annum, as necessary to carry out its functions under this chapter."

Subsec. (a)(2), (3). Pub. L. 111–203, §1473(g)(1), (3), added pars. (2) and (3). Former par. (2) redesignated (4).

Subsec. (a)(4). Pub. L. 111–203, §1473(h)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "collect from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$25, such fees to be transmitted by the State agencies to the Council on an annual basis."

Pub. L. 111–203, §1473(g)(2), redesignated par. (2) as (4).

Subsec. (b)(5), (6). Pub. L. 111–203, §1473(i), added pars. (5) and (6).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

GRANTS AND REPORTS

Pub. L. 111–203, title XIV, §1473(i), July 21, 2010, 124 Stat. 2195, provided that:

[Introductory provisions and pars. (1) to (3) amended this section].

"Obligations authorized under this subsection [amending this section] may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the 'Appraisal Subcommittee Account' pursuant to subsection (h) [amending this section and enacting provisions set out as a note under this section]."

INCREMENTAL REVENUES

Pub. L. 111–203, title XIV, §1473(h)(2), July 21, 2010, 124 Stat. 2195, provided that: "Incremental revenues collected pursuant to the increases required by this subsection [amending this section] shall be placed in a separate account at the United States Treasury, entitled the 'Appraisal Subcommittee Account'."

§3339. Functions of Federal financial institutions regulatory agencies relating to appraisal standards

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency or instrumentality. These rules shall require, at a minimum—

- (1) that real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation;
- (2) that such appraisals shall be written appraisals; and
- (3) that such appraisals shall be subject to appropriate review for compliance with the Uniform Standards of Professional Appraisal Practice.

Each such agency or instrumentality may require compliance with additional standards if it makes a determination in writing that such additional standards are required in order to properly carry out its statutory responsibilities.

(Pub. L. 101–73, title XI, §1110, Aug. 9, 1989, 103 Stat. 514; Pub. L. 111–203, title XIV, §1473(e)(1), July 21, 2010, 124 Stat. 2191.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 added par. (3).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§3340. Time for proposal and adoption of standards

Appraisal standards established under this chapter shall be proposed not later than 6 months and shall be adopted in final form and become effective not later than 12 months after August 9, 1989.

(Pub. L. 101–73, title XI, §1111, Aug. 9, 1989, 103 Stat. 514.)

§3341. Functions of Federal financial institutions regulatory agencies relating to appraiser qualifications

(a) In general

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation shall prescribe, in accordance with sections 3342 and 3343 of this title, which categories of federally related transactions should be appraised by a State certified appraiser and which by a State licensed appraiser under this chapter.

(b) Threshold level

Each Federal financial institutions regulatory agency and the Resolution Trust Corporation may establish a threshold level at or below which a certified or licensed appraiser is not required to perform appraisals in connection with federally related transactions, if such agency determines in writing that such threshold level does not represent a threat to the safety and soundness of financial institutions, and receives concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences.

(c) GAO study of appraisals in connection with real estate related financial transactions below threshold level

(1) GAO studies

The Comptroller General of the United States may conduct, under such conditions as the Comptroller General determines appropriate, studies on the adequacy and quality of appraisals or evaluations conducted in connection with real estate related financial transactions below the threshold level established under subsection (b), taking into account—

- (A) the cost to any financial institution involved in any such transaction;
- (B) the possibility of losses to the Deposit Insurance Fund or the National Credit Union Share Insurance Fund;
- (C) the cost to any customer involved in any such transaction; and
- (D) the effect on low-income housing.

(2) Reports to Congress and the appropriate Federal financial institutions regulatory agencies

Upon completing each of the studies referred to in paragraph (1), the Comptroller General shall submit a report on the Comptroller General's findings and conclusions with respect to such study to the Federal financial institutions regulatory agencies, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for legislative or administrative action as the Comptroller General determines to be appropriate.

(Pub. L. 101–73, title XI, §1112, Aug. 9, 1989, 103 Stat. 514; Pub. L. 102–550, title IX, §954, Oct. 28, 1992, 106 Stat. 3894; Pub. L. 104–208, div. A, title II, §2704(d)(15)(B), Sept. 30, 1996, 110 Stat. 3009–495; Pub. L. 104–316, title I, §106(g), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §9(g)(2), Feb. 15, 2006, 119 Stat. 3618; Pub. L. 111–203, title XIV, §1473(a), July 21, 2010, 124 Stat. 2190.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted ", and receives concurrence from the Bureau of Consumer Financial Protection that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences" before the period.

2006—Subsec. (c)(1)(B). Pub. L. 109–173 substituted "Deposit Insurance Fund" for "Bank Insurance Fund, the Savings Association Insurance Fund,".

Pub. L. 109–171 repealed Pub. L. 104–208, §2704(d)(15)(B). See 1996 Amendment note below.

1996—Subsec. (c)(1). Pub. L. 104–316, §106(g)(1)(A), (2), in heading substituted "GAO studies" for "Study required", and in text substituted "The Comptroller General of the United States may conduct, under such conditions as the Comptroller General determines appropriate, studies" for "At the end of the 18-month period, and the end of the 36-month period, beginning on October 28, 1992, the Comptroller General of the United States shall conduct a study".

Subsec. (c)(1)(B). Pub. L. 104–208, §2704(d)(15)(B), which directed substitution of "Deposit Insurance Fund" for "Bank Insurance Fund, the Savings Association Insurance Fund,", was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (c)(2). Pub. L. 104–316, §106(g)(1)(B), substituted "referred to in" for "required under".

1992—Pub. L. 102–550 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–173 effective Mar. 31, 2006, see section 9(j) of Pub. L. 109–173, set out as a note under section 24 of this title.

Amendment by Pub. L. 109–171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109–171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, formerly set out as a note under section 1821 of this title.

§3342. Transactions requiring services of State certified appraiser

In determining whether an appraisal in connection with a federally related transaction shall be performed by a State certified appraiser, an agency or instrumentality under this chapter shall consider whether transactions, either individually or collectively, are of sufficient financial or public policy importance to the United States that an individual who performs an appraisal in connection with such transactions should be a State certified appraiser, except that—

(1) a State certified appraiser shall be required for all federally related transactions having a value of \$1,000,000 or more; and

(2) 1-to-4 unit, single family residential appraisals may be performed by State licensed appraisers unless the size and complexity requires a State certified appraiser, where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical.

(Pub. L. 101–73, title XI, §1113, Aug. 9, 1989, 103 Stat. 514; Pub. L. 111–203, title XIV, §1473(e)(2), July 21, 2010, 124 Stat. 2191.)

EDITORIAL NOTES

AMENDMENTS

2010—Par. (2). Pub. L. 111–203 inserted ", where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical" before the period.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§3343. Transactions requiring services of State licensed appraiser

All federally related transactions not requiring the services of a State certified appraiser shall be performed by either a State certified or licensed appraiser.

(Pub. L. 101–73, title XI, §1114, Aug. 9, 1989, 103 Stat. 514.)

§3344. Time for proposal and adoption of rules

As appropriate, rules issued under sections 3342 and 3343 of this title shall be proposed not later than 6 months and shall be effective upon adoption in final form not later than 12 months after August 9, 1989.

(Pub. L. 101–73, title XI, §1115, Aug. 9, 1989, 103 Stat. 515.)

§3345. Certification and licensing requirements

(a) In general

For purposes of this chapter, the term "State certified real estate appraiser" means any individual who has satisfied the requirements for State certification in a State or territory whose criteria for certification as a real estate appraiser currently meets the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation.

(b) Restriction

No individual shall be a State certified real estate appraiser under this section unless such individual has achieved a passing grade upon a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation.

(c) "State licensed appraiser" defined

As used in this section, the term "State licensed appraiser" means an individual who has satisfied the requirements for State licensing in a State or territory whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers.

(d) Additional qualification criteria

Nothing in this chapter shall be construed to prevent any Federal agency or instrumentality under this chapter from establishing such additional qualification criteria as may be necessary or appropriate to carry out the statutory responsibilities of such department, agency, or instrumentality.

(e) Minimum qualification requirements

Any requirements established for individuals in the position of "Trainee Appraiser" and "Supervisory Appraiser" shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.

(Pub. L. 101-73, title XI, §1116, Aug. 9, 1989, 103 Stat. 515; Pub. L. 102-233, title VII, §701(a), Dec. 12, 1991, 105 Stat. 1792; Pub. L. 102-242, title IV, §472(a), Dec. 19, 1991, 105 Stat. 2386; Pub. L. 102-550, title XVI, §1617(a), Oct. 28, 1992, 106 Stat. 4096; Pub. L. 111-203, title XIV, §1473(j), July 21, 2010, 124 Stat. 2195.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-203, §1473(j)(1), inserted "whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers" before the period at end.

Subsec. (e). Pub. L. 111-203, §1473(j)(2), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: "The Appraisal Subcommittee shall not set qualifications or experience requirements for the States in licensing real estate appraisers, including a de minimus standard. Recommendations of the Subcommittee shall be nonbinding on the States."

1992—Subsec. (e). Pub. L. 102-550, §1617(a), repealed Pub. L. 102-233, §701(a). See 1991 Amendment note below.

1991—Subsec. (e). Pub. L. 102-242 added subsec. (e) prohibiting Appraisal Subcommittee from setting qualifications or experience requirements, including a de minimis standard.

Pub. L. 102-233, §701(a), which added subsec. (e) prohibiting Appraisal Subcommittee from setting qualifications or experience requirements, was repealed by Pub. L. 102-550, §1617(a). See Construction of 1991 Amendment note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as a note under section 1601 of Title 15, Commerce and Trade.

CONSTRUCTION OF 1991 AMENDMENT

Pub. L. 102-550, title XVI, §1617(b), Oct. 28, 1992, 106 Stat. 4096, provided that: "No amendments made by title VII of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 [amending this section and section 3348 of this title] shall be deemed to have taken effect before the date of the enactment of this Act [Oct. 28, 1992] and the provisions of law amended by title VII shall continue in effect as if no such amendments had been made by such title."

§3346. Establishment of State appraiser certifying and licensing agencies

To assure the availability of State certified and licensed appraisers for the performance in a State of appraisals in federally related transactions and to assure effective supervision of the activities of certified and licensed appraisers, a State may establish a State appraiser certifying and licensing agency. The duties of such agency may additionally include the registration and supervision of appraisal management companies and the addition of information about the appraisal management company to the national registry.

(Pub. L. 101-73, title XI, §1117, Aug. 9, 1989, 103 Stat. 515; Pub. L. 111-203, title XIV, §1473(f)(3), July 21, 2010, 124 Stat. 2193.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111-203 inserted at end "The duties of such agency may additionally include the registration and supervision of appraisal management companies and the addition of information about the appraisal

management company to the national registry."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§3347. Monitoring of State appraiser certifying and licensing agencies

(a) In general

The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

- (1) has policies, practices, funding, staffing, and procedures that are consistent with this chapter;
- (2) processes complaints and completes investigations in a reasonable time period;
- (3) appropriately disciplines sanctioned appraisers and appraisal management companies;
- (4) maintains an effective regulatory program; and
- (5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Appraisal Subcommittee.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis, not to exceed 90 days, pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this chapter shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this chapter. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analysis of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.

(b) Disapproval by Appraisal Subcommittee

The Federal financial institutions, ¹ regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation shall accept certifications and licenses awarded by a State appraiser certifying the licensing agency unless the Appraisal Subcommittee issues a written finding that—

- (1) the State agency fails to recognize and enforce the standards, requirements, and procedures prescribed pursuant to this chapter;
- (2) the State agency is not granted authority or sufficient funding by the State which is adequate to permit the agency to carry out its functions under this chapter; or
- (3) decisions concerning appraisal standards, appraiser qualifications and supervision of appraiser practices are not made in a manner that carries out the purposes of this chapter.

(c) Rejection of State certifications and licenses

(1) Opportunity to be heard or correct conditions

Before refusing to recognize a State's appraiser certifications or licenses, the Appraisal Subcommittee shall provide that State's certifying and licensing agency a written notice of its intention not to recognize the State's certified or licensed appraisers and ample opportunity to provide rebuttal information or to correct the conditions causing the refusal.

(2) Adoption of procedures

The Appraisal Subcommittee shall adopt written procedures for taking actions described in this section.

(3) Judicial review

A decision of the subcommittee under this section shall be subject to judicial review.

(Pub. L. 101-73, title XI, §1118, Aug. 9, 1989, 103 Stat. 515; Pub. L. 111-203, title XIV, §1473(k), July 21, 2010, 124 Stat. 2196.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this title", meaning title XI of Pub. L. 101-73, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203, §1473(k)(1), amended subsec. (a) generally. Prior to amendment, text read as follows: "The Appraisal Subcommittee shall monitor State appraiser certifying and licensing agencies for the purpose of determining whether a State agency's policies, practices, and procedures are consistent with this chapter. The Appraisal Subcommittee and all agencies, instrumentalities, and federally recognized entities under this chapter shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, or procedures are found to be inconsistent with this chapter."

Subsec. (b)(2). Pub. L. 111-203, §1473(k)(2), inserted "or sufficient funding" after "authority".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as a note under section 1601 of Title 15, Commerce and Trade.

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

§3348. Recognition of State certified and licensed appraisers for purposes of this chapter

(a) Effective date for use of certified or licensed appraisers only

(1) In general

Not later than December 31, 1992, all appraisals performed in connection with federally related transactions shall be performed only by individuals certified or licensed in accordance with the requirements of this chapter.

(2) Extension of effective date

Subject to the approval of the Council, the Appraisal Subcommittee may extend, until December 31, 1991, the effective date for the use of certified or licensed appraisers if it makes a written finding that a State has made substantial progress in establishing a State certification and

licensing system that appears to conform to the provisions of this chapter.

(b) Temporary waiver of appraiser certification or licensing requirements for State having scarcity of qualified appraisers

Subject to the approval of the Council, the Appraisal Subcommittee may waive any requirement relating to certification or licensing of a person to perform appraisals under this chapter if the Appraisal Subcommittee or a State agency whose certifications and licenses are in compliance with this chapter, makes a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with federally related transactions in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals. The waiver terminates when the Appraisal Subcommittee determines that such significant delays have been eliminated.

(c) Reports to State certifying and licensing agencies

The Appraisal Subcommittee, any other Federal agency or instrumentality, or any federally recognized entity shall report any action of a State certified or licensed appraiser that is contrary to the purposes of this chapter, to the appropriate State agency for a disposition of the subject of the referral. The State agency shall provide the Appraisal Subcommittee or the other Federal agency or instrumentality with a report on its disposition of the matter referred. Subsequent to such disposition, the subcommittee or the agency or instrumentality may take such further action, pursuant to written procedures, it deems necessary to carry out the purposes of this chapter.

(Pub. L. 101-73, title XI, §1119, Aug. 9, 1989, 103 Stat. 516; Pub. L. 102-233, title VII, §701(b), Dec. 12, 1991, 105 Stat. 1792; Pub. L. 102-242, title IV, §472(b), Dec. 19, 1991, 105 Stat. 2386; Pub. L. 102-550, title XVI, §1617(a), Oct. 28, 1992, 106 Stat. 4096; Pub. L. 111-203, title XIV, §1473(t)(1), July 21, 2010, 124 Stat. 2199.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111-203 substituted "Council," for "council,".

1992—Subsecs. (a)(1), (b). Pub. L. 102-550, §1617(a), repealed Pub. L. 102-233, §701(b). See 1991 Amendment note below.

1991—Subsec. (a)(1). Pub. L. 102-242, §472(b)(1), substituted "December 31, 1992" for "July 1, 1991". Pub. L. 102-233, §701(b)(1), which made an identical amendment, was repealed by Pub. L. 102-550, §1617(a). See Construction of 1991 Amendment note below.

Subsec. (b). Pub. L. 102-242, §472(b)(2), substituted ", or in any geographical political subdivision of a State, leading to significant delays" for "leading to inordinate delays" in first sentence and "significant" for "inordinate" in second sentence. Pub. L. 102-233, §701(b)(2), which made an identical amendment, was repealed by Pub. L. 102-550, §1617(a). See Construction of 1991 Amendment note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as a note under section 1601 of Title 15, Commerce and Trade.

CONSTRUCTION OF 1991 AMENDMENT

No amendment to this section by section 701 of Pub. L. 102-233 to be deemed to have taken effect before Oct. 28, 1992, and provisions of law amended by such section 701 to continue in effect as if no such amendment had been made, see section 1617(b) of Pub. L. 102-550, set out as a note under section 3345 of this title.

§3349. Violations in obtaining and performing appraisals in federally related transactions

(a) Violations

Except as authorized by the Appraisal Subcommittee in exercising its waiver authority pursuant to section 3348(b) of this title, it shall be a violation of this section—

(1) for a financial institution to seek, obtain, or give money or any other thing of value in exchange for the performance of an appraisal by a person who the institution knows is not a State certified or licensed appraiser in connection with a federally related transaction; and

(2) for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Resolution Trust Corporation to knowingly contract for the performance of any appraisal by a person who is not a State certified or licensed appraiser in connection with a real estate related financial transaction defined in section 3350(5) of this title to which such association or corporation is a party.

(b) Penalties

A financial institution that violates subsection (a)(1) shall be subject to civil penalties under section 1818(i)(2) of this title or section 1786(k)(2) of this title, as appropriate.

(c) Proceeding

A proceeding with respect to a violation of this section shall be an administrative proceeding which may be conducted by a Federal financial institutions regulatory agency in accordance with the procedures set forth in subchapter II of chapter 5 of title 5.

(Pub. L. 101-73, title XI, §1120, Aug. 9, 1989, 103 Stat. 517.)

§3350. Definitions

For purposes of this chapter:

(1) State appraiser certifying and licensing agency

The term "State appraiser certifying and licensing agency" means a State agency established in compliance with this chapter.

(2) Appraisal Subcommittee; subcommittee

The terms "Appraisal Subcommittee" and "subcommittee" mean the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(3) Council

The term "Council" means the Federal Financial Institutions Examinations Council.

(4) Federally related transaction

The term "federally related transaction" means any real estate-related financial transaction which—

(A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(B) requires the services of an appraiser.

(5) Real estate related financial transaction

The term "real estate-related financial transaction" means any transaction involving—

(A) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(B) the refinancing of real property or interests in real property; and

(C) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(6) Federal financial institutions regulatory agencies

The term "Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

(7) Financial institution

The term "financial institution" means an insured depository institution as defined in section 1813 of this title or an insured credit union as defined in section 1752 of this title.

(8) Chairperson

The term "Chairperson" means the Chairperson of the Appraisal Subcommittee selected by the Council.

(9) Foundation

The terms "Appraisal Foundation" and "Foundation" means the Appraisal Foundation established on November 30, 1987, as a not for profit corporation under the laws of Illinois.

(10) Written appraisal

The term "written appraisal" means a written statement used in connection with a federally related transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

(11) Appraisal management company

The term "appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

(A) to recruit, select, and retain appraisers;

(B) to contract with licensed and certified appraisers to perform appraisal assignments;

(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(D) to review and verify the work of appraisers.

(Pub. L. 101–73, title XI, §1121, Aug. 9, 1989, 103 Stat. 517; Pub. L. 111–203, title XIV, §1473(f)(4), (t)(2), (3), July 21, 2010, 124 Stat. 2193, 2199.)

EDITORIAL NOTES

AMENDMENTS

2010—Par. (6). Pub. L. 111–203, §1473(t)(2), substituted "Corporation," for "Corporations,".

Par. (8). Pub. L. 111–203, §1473(t)(3), substituted "Council" for "council".

Par. (11). Pub. L. 111–203, §1473(f)(4), added par. (11).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§3351. Miscellaneous provisions

(a) Temporary practice

(1) In general

A State appraiser certifying or licensing agency shall recognize on a temporary basis the certification or license of an appraiser issued by another State if—

- (A) the property to be appraised is part of a federally related transaction,
- (B) the appraiser's business is of a temporary nature, and
- (C) the appraiser registers with the appraiser certifying or licensing agency in the State of temporary practice.

(2) Fees for temporary practice

A State appraiser certifying or licensing agency shall not impose excessive fees or burdensome requirements, as determined by the Appraisal Subcommittee, for temporary practice under this subsection.

(b) Reciprocity

Notwithstanding any other provisions of this chapter, a federally related transaction shall not be appraised by a certified or licensed appraiser unless the State appraiser certifying or licensing agency of the State certifying or licensing such appraiser has in place a policy of issuing a reciprocal certification or license for an individual from another State when—

- (1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this chapter; and
- (2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.

(c) Supplemental funding

Funds available to the Federal financial institutions regulatory agencies may be made available to the Financial Institutions Examination Council to support the Council's functions under this chapter.

(d) Prohibition against discrimination

Criteria established by the Federal financial institutions regulatory agencies, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Resolution Trust Corporation for appraiser qualifications in addition to State certification or licensing may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.

(e) Other requirements

A corporation, partnership, or other business entity may provide appraisal services in connection with federally related transactions if such appraisal is prepared by individuals certified or licensed in accordance with the requirements of this chapter. An individual who is not a State certified or licensed appraiser may assist in the preparation of an appraisal if—

- (1) the assistant is under the direct supervision of a licensed or certified individual; and
- (2) the final appraisal document is approved and signed by an individual who is certified or licensed.

(f) Studies

(1) Study

The Appraisal Subcommittee shall—

- (A) conduct a study to determine whether real estate sales and financing information and data that is available to real estate appraisers in the States is sufficient to permit appraisers to properly estimate the values of properties in connection with federally related transactions; and

(B) study the feasibility and desirability of extending the provisions of this chapter to the function of personal property appraising and to personal property appraisers in connection with Federal financial and public policy interests.

(2) Report

The Appraisal Subcommittee shall—

(A) report its findings to the Congress with respect to the study described in paragraph (1)(A) no later than 12 months after August 9, 1989, and

(B) report its findings with respect to the study described in paragraph (1)(B) to Congress not later than 18 months after August 9, 1989.

(g) Appraiser independence monitoring

The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency's policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.

(h) Approved education

The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board's Course Approval Program.

(i) Appraisal complaint national hotline

If, 6 months after July 21, 2010, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.

(Pub. L. 101–73, title XI, §1122, Aug. 9, 1989, 103 Stat. 518; Pub. L. 103–325, title III, §315, Sept. 23, 1994, 108 Stat. 2222; Pub. L. 111–203, title XIV, §1473(l)–(p), (t)(4), July 21, 2010, 124 Stat. 2196, 2197, 2199.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(1)(A) to (C). Pub. L. 111–203, §1473(t)(4)(A), realigned margins.

Subsec. (b). Pub. L. 111–203, §1473(l), amended subsec. (b) generally. Prior to amendment, text read as follows: "The Appraisal Subcommittee shall encourage the States to develop reciprocity agreements that readily authorize appraisers who are licensed or certified in one State (and who are in good standing with their State appraiser certifying or licensing agency) to perform appraisals in other States."

Subsec. (c). Pub. L. 111–203, §1473(t)(4)(B), substituted "Financial Institutions Examination Council" for "Federal Financial Institutions Examination Council" and "the Council's functions" for "the council's functions".

Subsec. (d). Pub. L. 111–203, §1473(m), substituted "may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria." for "shall not exclude a certified or licensed appraiser for consideration for an assignment solely by virtue of membership or lack of membership in any particular appraisal organization."

Subsec. (g). Pub. L. 111–203, §1473(n), added subsec. (g).

Subsec. (h). Pub. L. 111–203, §1473(o), added subsec. (h).

Subsec. (i). Pub. L. 111–203, §1473(p), added subsec. (i).

1994—Subsec. (a). Pub. L. 103–325, §315(3), redesignated existing provisions as par. (1), inserted heading, redesignated former pars. (1) to (3) as subpars. (A) to (C) of par. (1), and added par. (2).

Subsecs. (b) to (f). Pub. L. 103–325, §315(1), (2), added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of Title 15, Commerce and Trade.

§3352. Emergency exceptions for disaster areas

(a) In general

Each Federal financial institutions regulatory agency may, by regulation or order, make exceptions to this chapter, and to standards prescribed pursuant to this chapter, for transactions involving institutions for which the agency is the primary Federal regulator with respect to real property located within a disaster area if the agency—

(1) makes the exception not later than 30 months after the date on which the President determines, pursuant to section 5170 of title 42, that a major disaster exists in the area; and

(2) determines that the exception—

(A) would facilitate recovery from the major disaster; and

(B) is consistent with safety and soundness.

(b) 3-year limit on exceptions

Any exception made under this section shall expire not later than 3 years after the date of the determination referred to in subsection (a)(1).

(c) Publication required

Any Federal financial institutions regulatory agency shall publish in the Federal Register a statement that—

(1) describes any exception made under this section; and

(2) explains how the exception—

(A) would facilitate recovery from the major disaster; and

(B) is consistent with safety and soundness.

(d) "Disaster area" defined

For purposes of this section, the term "disaster area" means an area in which the President, pursuant to section 5170 of title 42, has determined that a major disaster exists.

(Pub. L. 101–73, title XI, §1123, as added Pub. L. 102–485, §2, Oct. 23, 1992, 106 Stat. 2771.)

§3353. Appraisal management company minimum requirements

(a) In general

The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal

Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of appraisal management companies. Such requirements shall include a requirement that such companies—

- (1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;
- (2) verify that only licensed or certified appraisers are used for federally related transactions;
- (3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and
- (4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 1639e of title 15.

(b) Relation to State law

Nothing in this section shall be construed to prevent States from establishing requirements in addition to any rules promulgated under subsection (a).

(c) Federally regulated financial institutions

The requirements of subsection (a) shall apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency. An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal financial institution regulatory agency shall not be required to register with a State.

(d) Registration limitations

An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, as determined by the State appraiser certifying and licensing agency, and shall submit to a background investigation carried out by the State appraiser certifying and licensing agency.

(e) Reporting

The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection shall jointly promulgate regulations for the reporting of the activities of appraisal management companies to the Appraisal Subcommittee in determining the payment of the annual registry fee.

(f) Effective date

(1) In general

No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date on which the regulations required to be prescribed under subsection (a) are prescribed in final form unless such company is registered with such State or subject to oversight by a Federal financial institutions regulatory agency.

(2) Extension of effective date

Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this chapter.

(Pub. L. 101–73, title XI, §1124, as added Pub. L. 111–203, title XIV, §1473(f)(2), July 21, 2010, 124 Stat. 2192.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§3354. Automated valuation models used to estimate collateral value for mortgage lending purposes

(a) In general

Automated valuation models shall adhere to quality control standards designed to—

- (1) ensure a high level of confidence in the estimates produced by automated valuation models;
- (2) protect against the manipulation of data;
- (3) seek to avoid conflicts of interest;
- (4) require random sample testing and reviews; and
- (5) account for any other such factor that the agencies listed in subsection (b) determine to be appropriate.

(b) Adoption of regulations

The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau of Consumer Financial Protection, in consultation with the staff of the Appraisal Subcommittee and the Appraisal Standards Board of the Appraisal Foundation, shall promulgate regulations to implement the quality control standards required under this section.

(c) Enforcement

Compliance with regulations issued under this subsection shall be enforced by—

- (1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and
- (2) with respect to other participants in the market for appraisals of 1-to-4 unit single family residential real estate, the Federal Trade Commission, the Bureau of Consumer Financial Protection, and a State attorney general.

(d) Automated valuation model defined

For purposes of this section, the term "automated valuation model" means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

(Pub. L. 101–73, title XI, §1125, as added Pub. L. 111–203, title XIV, §1473(q), July 21, 2010, 124 Stat. 2198.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

§3355. Broker price opinions

(a) General prohibition

In conjunction with the purchase of a consumer's principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

(b) Broker price opinion defined

For purposes of this section, the term "broker price opinion" means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 3354(c) ¹ of this title.

(Pub. L. 101-73, title XI, §1126, as added Pub. L. 111-203, title XIV, §1473(r), July 21, 2010, 124 Stat. 2198.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3354(c) of this title, referred to in subsec. (b), probably means section 3354(d) of this title, which defines "automated valuation model".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1601 of Title 15, Commerce and Trade.

¹ [*See References in Text note below.*](#)

§3356. Exemption from appraisals of real estate located in rural areas

(a) Definitions

In this section—

(1) the term "mortgage originator" has the meaning given the term in section 1602 of title 15; and

(2) the term "transaction value" means the amount of a loan or extension of credit, including a loan or extension of credit that is part of a pool of loans or extensions of credit.

(b) Appraisal not required

Except as provided in subsection (d), notwithstanding any other provision of law, an appraisal in connection with a federally related transaction involving real property or an interest in real property is not required if—

(1) the real property or interest in real property is located in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations;

(2) not later than 3 days after the date on which the Closing Disclosure Form, made in accordance with the final rule of the Bureau of Consumer Financial Protection entitled "Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the

Truth in Lending Act (Regulation Z)" (78 Fed. Reg. 79730 (December 31, 2013)), relating to the federally related transaction is given to the consumer, the mortgage originator or its agent, directly or indirectly—

(A) has contacted not fewer than 3 State certified appraisers or State licensed appraisers, as applicable, on the mortgage originator's approved appraiser list in the market area in accordance with part 226 of title 12, Code of Federal Regulations; and

(B) has documented that no State certified appraiser or State licensed appraiser, as applicable, was available within 5 business days beyond customary and reasonable fee and timeliness standards for comparable appraisal assignments, as documented by the mortgage originator or its agent;

(3) the transaction value is less than \$400,000; and

(4) the mortgage originator is subject to oversight by a Federal financial institutions regulatory agency.

(c) Sale, assignment, or transfer

A mortgage originator that makes a loan without an appraisal under the terms of subsection (b) shall not sell, assign, or otherwise transfer legal title to the loan unless—

(1) the loan is sold, assigned, or otherwise transferred to another person by reason of the bankruptcy or failure of the mortgage originator;

(2) the loan is sold, assigned, or otherwise transferred to another person regulated by a Federal financial institutions regulatory agency, so long as the loan is retained in portfolio by the person;

(3) the sale, assignment, or transfer is pursuant to a merger of the mortgage originator with another person or the acquisition of the mortgage originator by another person or of another person by the mortgage originator; or

(4) the sale, loan, or transfer is to a wholly owned subsidiary of the mortgage originator, provided that, after the sale, assignment, or transfer, the loan is considered to be an asset of the mortgage originator for regulatory accounting purposes.

(d) Exception

Subsection (b) shall not apply if—

(1) a Federal financial institutions regulatory agency requires an appraisal under section 225.63(c), 323.3(c), 34.43(c), or 722.3(e) of title 12, Code of Federal Regulations; or

(2) the loan is a high-cost mortgage, as defined in section 1602 of title 15.

(e) Anti-evasion

Each Federal financial institutions regulatory agency shall ensure that any mortgage originator that the Federal financial institutions regulatory agency oversees that makes a significant amount of loans under subsection (b) is complying with the requirements of subsection (b)(2) with respect to each loan.

(Pub. L. 101–73, title XI, §1127, as added Pub. L. 115–174, title I, §103, May 24, 2018, 132 Stat. 1299.)

CHAPTER 35—RIGHT TO FINANCIAL PRIVACY

Sec.

3401. Definitions.

3402. Access to financial records by Government authorities prohibited; exceptions.

3403. Confidentiality of financial records.

3404. Customer authorizations.

3405. Administrative subpoena and summons.

3406. Search warrants.

3407. Judicial subpoena.

- 3408. Formal written request.
- 3409. Delayed notice.
- 3410. Customer challenges.
- 3411. Duty of financial institutions.
- 3412. Use of information.
- 3413. Exceptions.
- 3414. Special procedures.
- 3415. Cost reimbursement.
- 3416. Jurisdiction.
- 3417. Civil penalties.
- 3418. Injunctive relief.
- 3419. Suspension of limitations.
- 3420. Grand jury information; notification of certain persons prohibited.
- 3421. Repealed.
- 3422. Applicability to Securities and Exchange Commission.
- 3423. Immunity from suit for disclosure of financial exploitation of senior citizens.

§3401. Definitions

For the purpose of this chapter, the term—

(1) "financial institution", except as provided in section 3414 of this title, means any office of a bank, savings bank, card issuer as defined in section 1602(n) ¹ of title 15, industrial loan company, trust company, savings association, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or fewer individuals;

(5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) "holding company" means—

(A) any bank holding company (as defined in section 1841 of this title); and

(B) any company described in section 1843(f)(1) of this title;

(7) "supervisory agency" means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary—

(A) the Federal Deposit Insurance Corporation;

(B) the Bureau of Consumer Financial Protection;

(C) the National Credit Union Administration;

(D) the Board of Governors of the Federal Reserve System;

(E) the Comptroller of the Currency;

(F) the Securities and Exchange Commission;

(G) the Commodity Futures Trading Commission;

(H) the Secretary of the Treasury, with respect to the Bank Secrecy Act (Public Law 91-508, title I) [12 U.S.C. 1951 et seq.] and subchapter II of chapter 53 of title 31; or

(I) any State banking or securities department or agency; and

(8) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(Pub. L. 95–630, title XI, §1101, Nov. 10, 1978, 92 Stat. 3697; Pub. L. 101–73, title VII, §744(b), title IX, §941, Aug. 9, 1989, 103 Stat. 438, 496; Pub. L. 101–647, title XXV, §2596(c), Nov. 29, 1990, 104 Stat. 4908; Pub. L. 106–102, title VII, §727(b)(1), Nov. 12, 1999, 113 Stat. 1475; Pub. L. 108–177, title III, §374(b), Dec. 13, 2003, 117 Stat. 2628; Pub. L. 111–203, title X, §1099(1), July 21, 2010, 124 Stat. 2105.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 1602(n) of title 15, referred to in par. (1), was redesignated section 1602(o) of title 15 by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Bank Secrecy Act, referred to in par. (7)(H), is title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1114, which is classified principally to chapter 21 (§1951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1951 of this title and Tables.

CODIFICATION

In par. (7)(H), "the Bank Secrecy Act (Public Law 91–508, title I) [12 U.S.C. 1951 et seq.] and subchapter II of chapter 53 of title 31" substituted for "the Bank Secrecy Act [12 U.S.C. 1951 et seq.] and the Currency and Foreign Transactions Reporting Act [31 U.S.C. 1051 et seq.] (Public Law 91–508, title I and II)", on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2010—Par. (6). Pub. L. 111–203, §1099(1)(A), inserted "and" at end of subpar. (A), struck out "and" at end of subpar. (B), and struck out subpar. (C) which read as follows: "any savings and loan holding company (as defined in the Home Owners' Loan Act);".

Par. (7)(B). Pub. L. 111–203, §1099(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: "Director, Office of Thrift Supervision;".

2003—Par. (1). Pub. L. 108–177 inserted ", except as provided in section 3414 of this title," before "means any office".

1999—Par. (7)(G) to (I). Pub. L. 106–102 added subpar. (G) and redesignated former subpars. (G) and (H) as (H) and (I), respectively.

1990—Par. (6)(B). Pub. L. 101–647 substituted "section 1843(f)(1)" for "section 1842(f)(1)".

1989—Par. (1). Pub. L. 101–73, §744(b)(1), substituted "savings association" for "savings and loan".

Par. (6). Pub. L. 101–73, §941(3), added par. (6). Former par. (6) redesignated (7).

Par. (7). Pub. L. 101–73, §941(1), (2), redesignated former par. (6) as (7) and substituted new introductory provisions for former introductory provisions which read as follows: " 'supervisory agency' means, with respect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution—". Former par. (7) redesignated (8).

Pub. L. 101–73, §744(b)(2), (3), redesignated subpars. (C) to (I) as (B) to (H), respectively, substituted "Director, Office of Thrift Supervision" for "the Federal Home Loan Bank Board" in subpar. (B), and struck out former subpar. (B) which read as follows: "the Federal Savings and Loan Insurance Corporation;".

Par. (8). Pub. L. 101–73, §941(1), redesignated par. (7) as (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630,

set out as a note under section 375b of this title.

SHORT TITLE

Pub. L. 95–630, title XI, §1100, Nov. 10, 1978, 92 Stat. 3697, provided that: "This title [enacting this chapter] may be cited as the 'Right to Financial Privacy Act of 1978'."

¹ [*See References in Text note below.*](#)

§3402. Access to financial records by Government authorities prohibited; exceptions

Except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

- (1) such customer has authorized such disclosure in accordance with section 3404 of this title;
- (2) such financial records are disclosed in response to an administrative subpoena or summons which meets the requirements of section 3405 of this title;
- (3) such financial records are disclosed in response to a search warrant which meets the requirements of section 3406 of this title;
- (4) such financial records are disclosed in response to a judicial subpoena which meets the requirements of section 3407 of this title; or
- (5) such financial records are disclosed in response to a formal written request which meets the requirements of section 3408 of this title.

(Pub. L. 95–630, title XI, §1102, Nov. 10, 1978, 92 Stat. 3697.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3403. Confidentiality of financial records

(a) Release of records by financial institutions prohibited

No financial institution, or officer, employee, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.

(b) Release of records upon certification of compliance with chapter

A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this chapter.

(c) Notification to Government authority of existence of relevant information in records

Nothing in this chapter shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to

the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

(d) Release of records as incident to perfection of security interest, proving a claim in bankruptcy, collecting a debt, or processing an application with regard to a Government loan, loan guarantee, etc.

(1) Nothing in this chapter shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this chapter shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

(Pub. L. 95-630, title XI, §1103, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 99-570, title I, §1353(a), Oct. 27, 1986, 100 Stat. 3207-21; Pub. L. 100-690, title VI, §6186(a), Nov. 18, 1988, 102 Stat. 4357.)

EDITORIAL NOTES

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-690 inserted ", corporation," after "individual".

1986—Subsec. (c). Pub. L. 99-570 inserted provisions that the disclosure of only the name or other identifying information concerning any individual or account involved in and the nature of any suspected illegal activity is permitted notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary, and any financial institutions, officers, agents, or employees thereof making such disclosure shall not be liable to the customer under any State constitution or any Federal, State, or local law or regulation for such disclosure or failure to notify the customer thereof.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§3404. Customer authorizations

(a) Statement furnished by customer to financial institution and Government authority; contents

A customer may authorize disclosure under section 3402(1) of this title if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

- (1) authorizes such disclosure for a period not in excess of three months;
- (2) states that the customer may revoke such authorization at any time before the financial records are disclosed;
- (3) identifies the financial records which are authorized to be disclosed;
- (4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and
- (5) states the customer's rights under this chapter.

(b) Authorization as condition of doing business prohibited

No such authorization shall be required as a condition of doing business with any financial institution.

(c) Right of customer to access to financial institution's record of disclosures

The customer has the right, unless the Government authority obtains a court order as provided in section 3409 of this title, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

(Pub. L. 95-630, title XI, §1104, Nov. 10, 1978, 92 Stat. 3698; Pub. L. 96-3, Mar. 7, 1979, 93 Stat. 5.)

EDITORIAL NOTES

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-3 struck out subsec. (d) which had directed that all financial institutions promptly notify all of their customers of their rights under this chapter, that the Board of Governors of the Federal Reserve System prepare a statement of customers' rights under this chapter, and that the supplying of such a statement to their customers by the financial institutions be deemed compliance with the notification requirement.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§3405. Administrative subpoena and summons

A Government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpoena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpoena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95-630, title XI, §1105, Nov. 10, 1978, 92 Stat. 3699.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (2), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as a note under section 375b of this title.

§3406. Search warrants

(a) Applicability of Federal Rules of Criminal Procedure

A Government authority may obtain financial records under section 3402(3) of this title only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) Mailing of copy and notice to customer

No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].".

(c) Court-ordered delays in mailing

Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 3409(a) of this title. If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date). Notification was

delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning . You may have rights under the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.].".

(Pub. L. 95–630, title XI, §1106, Nov. 10, 1978, 92 Stat. 3700.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

The Right to Financial Privacy Act of 1978, referred to in subsecs. (b) and (c), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3407. Judicial subpoena

A Government authority may obtain financial records under section 3402(4) of this title pursuant to judicial subpoena only if—

(1) such subpoena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpoena has been served upon the customer or mailed to his last known address on or before the date on which the subpoena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpoena are being sought by this (agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of the Court.

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(3) ten days have expired from the date of service or fourteen days from the date of mailing of the notice to the customer and within such time period the customer has not filed a sworn

statement and motion to quash in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95–630, title XI, §1107, Nov. 10, 1978, 92 Stat. 3700.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (2), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3408. Formal written request

A Government authority may request financial records under section 3402(5) of this title pursuant to a formal written request only if—

(1) no administrative summons or subpoena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;

(2) the request is authorized by regulations promulgated by the head of the agency or department;

(3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

(4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.] for the following purpose:

"If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities

for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 3410 of this title have been complied with.

(Pub. L. 95–630, title XI, §1108, Nov. 10, 1978, 92 Stat. 3701.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Right to Financial Privacy Act of 1978, referred to in par. (4), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to this chapter (§3401 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective upon the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as a note under section 375b of this title.

§3409. Delayed notice

(a) Application by Government authority; findings

Upon application of the Government authority, the customer notice required under section 3404(c), 3405(2), 3406(c), 3407(2), 3408(4), or 3412(b) of this title may be delayed by order of an appropriate court if the presiding judge or magistrate judge finds that—

(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that such notice will result in—

(A) endangering life or physical safety of any person;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding ¹ subparagraphs.

An application for delay must be made with reasonable specificity.

(b) Grant of delay order; duration and specifications; extensions; copy of request and notice to customer

(1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (a), it shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made, except that, if the records have been sought by a Government authority exercising financial controls over foreign accounts in the United States under section 4305(b) of title 50, the International Emergency Economic Powers Act (title II, Public Law 95–223) [50 U.S.C. 1701 et seq.], or section 287c of title 22, and the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a customer or group of customers, or