

FARM CREDIT ACT OF 1971

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[As Amended Through P.L. 115–334, Enacted December 20, 2018]

【Currency: This publication is a compilation of the text of Public Law 92–181. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

TABLE OF CONTENTS¹

Sec. 1.1. Policy and objectives.
Sec. 1.2. The Farm Credit System.

TITLE I—FARM CREDIT BANKS

Sec. 1.3. Establishment, charters, titles, branches.
Sec. 1.4. Board of directors.
Sec. 1.5. General corporate powers.
Sec. 1.6. Farm Credit Bank capitalization.
Sec. 1.7. Lending authority.
Sec. 1.8. Interest rates and other charges.
Sec. 1.9. Eligibility.
Sec. 1.10. Security; terms.
Sec. 1.11. Purposes for extensions of credit.
Sec. 1.12. Related services.
Sec. 1.13. Loans through associations or agents.
Sec. 1.14. Liens on stock.
Sec. 1.15. Taxation.

TITLE II—FARM CREDIT ASSOCIATIONS

Subtitle A—Production Credit Associations

Sec. 2.0. Organization and charters.
Sec. 2.1. Board of directors.
Sec. 2.2. General corporate powers.
Sec. 2.3. Production credit association capitalization.
Sec. 2.4. Short- and intermediate-term loans; participation; other financial assistance; terms; conditions; interest; security.
Sec. 2.5. Other services.
Sec. 2.6. Liens on stock.
Sec. 2.7. Taxation.

Subtitle B—Federal Land Bank Associations

Sec. 2.10. Organizations; articles; charters; powers of the Farm Credit Administration.
Sec. 2.11. Board of directors.
Sec. 2.12. General corporate powers.
Sec. 2.13. Federal land bank association capitalization.

¹This table of contents is not part of the Act but is included for user convenience. The numbers in brackets refer to section numbers in title 7, United States Code.

- Sec. 2.13. Federal land bank association capitalization.
 Sec. 2.14. Agreements for sharing gains or losses.
 Sec. 2.15. Liens on stock.
 Sec. 2.16. Taxation.

TITLE III—BANKS FOR COOPERATIVES

PART A—BANKS FOR COOPERATIVES

- Sec. 3.0. Establishment; titles; branches.
 Sec. 3.1. Corporate existence; general corporate powers.
 Sec. 3.2. Board of directors.
 Sec. 3.3. Bank for cooperatives stock; value; classes of stock; voting; exchange.
 Sec. 3.4. Dividends.
 Sec. 3.5. Retirement of stock.
 Sec. 3.6. Guaranty fund subscriptions in lieu of stock.
 Sec. 3.7. Lending power.
 Sec. 3.8. Eligibility.
 Sec. 3.9. Ownership of stock by borrowers.
 Sec. 3.10. Interest rates; security; lien; cancellation; and application on indebtedness.
 Sec. 3.11. Earnings and reserves; application of savings.
 Sec. 3.12. Distribution of assets and liquidation or dissolution.
 Sec. 3.13. Taxation.

PART B—NATIONAL BANKS FOR COOPERATIVES

- Sec. 3.20. Charter, powers, and operation.
 Sec. 3.21. **[Repealed]**
 Sec. 3.22. Credit delivery office.
 Sec. 3.23. Consolidation of functions.
 Sec. 3.24. Exchange of ownership interests.
 Sec. 3.25. Capitalization.
 Sec. 3.26. Patronage pools.
 Sec. 3.27. Transactions to accomplish the merger.
 Sec. 3.28. Lending limits.

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

- Sec. 4.0. **[Repealed]**
 Sec. 4.1. **[Repealed]**
 Sec. 4.2. Power To borrow; issue notes, bonds, debentures, and other obligations.
 Sec. 4.3. Capital adequacy of banks and associations.
 Sec. 4.3A. Capitalization of System institutions.
 Sec. 4.4. Liability of banks; United States not liable.
 Sec. 4.5. **[Repealed]**
 Sec. 4.6. Bonds as investments.
 Sec. 4.7. Purchase and sale by Federal Reserve System.
 Sec. 4.8. Purchase and sale of obligations.
 Sec. 4.9. Federal Farm Credit Banks Funding Corporation.
 Sec. 4.9A. Protection of borrower stock.

PART B—DISSOLUTION

- Sec. 4.12. Dissolution; voluntary liquidation; mergers; receiverships; and conservators.
 Sec. 4.12A. Communications with stockholders.

PART C—RIGHTS OF BORROWERS; LOAN RESTRUCTURING

- Sec. 4.13. Disclosure.
 Sec. 4.13A. Access to documents and information.
 Sec. 4.13B. Notice of action on application.
 Sec. 4.14. Reconsideration of actions.
 Sec. 4.14A. Restructuring distressed loans.
 Sec. 4.14B. Effect of restructuring on borrower stock.
 Sec. 4.14C. **[Repealed]**
 Sec. 4.14D. Protection of borrowers who meet all loan obligations.
 Sec. 4.14E. Waiver of mediation rights by borrowers.

PART D—ACTIVITIES OF INSTITUTIONS OF THE SYSTEM

- Sec. 4.15. Nomination of association directors; representative selection of nominees.
 Sec. 4.16. **[Repealed]**
 Sec. 4.17. Interest rates.
 Sec. 4.18. Participation loans.
 Sec. 4.18A. Authority of Farm Credit Banks and direct lender associations to participate in loans to similar entities for risk management purposes.
 Sec. 4.19. Young, beginning, and small farmers and ranchers.
 Sec. 4.20. Prohibition against use of signed ballots.

PART E—SERVICE ORGANIZATIONS

- Sec. 4.25. Establishment.
 Sec. 4.26. Powers of the Farm Credit Administration.
 Sec. 4.27. Regulation and examination.
 Sec. 4.28. State laws.
 Sec. 4.28A. Definition of bank.

PART F—SALE OF INSURANCE

- Sec. 4.29. Lines of insurance.

PART G—MISCELLANEOUS

- Sec. 4.35. Limitation on separate sale.
 Sec. 4.36. Right of first refusal.
 Sec. 4.37. Application of uninsured accounts.
 Sec. 4.38. Affirmative action.
 Sec. 4.39. Encouragement of conservation practices.

TITLE V—FARM CREDIT ADMINISTRATION ORGANIZATION

PART A—DISTRICT ORGANIZATION

- Sec. 5.0. **[Transferred]**
 Sec. 5.1. **[Repealed]**
 Sec. 5.2. **[Repealed]**
 Sec. 5.3. **[Repealed]**
 Sec. 5.4. **[Repealed]**
 Sec. 5.5. **[Repealed]**
 Sec. 5.6. **[Repealed]**

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

- Sec. 5.7. The Farm Credit Administration.
 Sec. 5.8. The Farm Credit Administration Board; appointment; term of office; organization and compensation.
 Sec. 5.9. Powers of the Board.
 Sec. 5.10. Chairman; responsibilities; governing standards.
 Sec. 5.11. Organization of the Farm Credit Administration.
 Sec. 5.12. Advisory committees.
 Sec. 5.13. Seal.
 Sec. 5.13. Administrative expenses.
 Sec. 5.15. Farm Credit Administration operating expenses fund.
 Sec. 5.16. Quarters and facilities for the Farm Credit Administration.
 Sec. 5.17. Enumerated powers.
 Sec. 5.18. **[Repealed]**
 Sec. 5.19. Examinations.
 Sec. 5.20. Conditions of other banks and lending institutions.
 Sec. 5.21. Consent to the availability of reports and to examinations.
 Sec. 5.22. Reports on conditions of institutions receiving loans or deposits.
 Sec. 5.22A Uniform financial reporting instructions.
 Sec. 5.23 Jurisdiction.
 Sec. 5.24 State legislation.

PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

- Sec. 5.25 Cease and desist proceedings.
 Sec. 5.26 Temporary cease and desist orders.
 Sec. 5.27 Enforcement of temporary cease and desist orders.
 Sec. 5.28 Suspension or removal of director or officer.
 Sec. 5.29 Suspension or removal of director or officer charged with felony.

- Sec. 5.29A. Removal and prohibition authority; industry-wide prohibition.
 Sec. 5.30 Hearings and judicial review.
 Sec. 5.31 Jurisdiction and enforcement.
 Sec. 5.31A Jurisdiction over institution-affiliated parties.
 Sec. 5.32 Penalty.
 Sec. 5.33 Further penalties.
 Sec. 5.34 Replacement of Suspended or Removed Directors.
 Sec. 5.35 Definitions.
 Sec. 5.36 Notice of service.
 Sec. 5.37 Ancillary provisions; subpoena power; etc.
 Sec. 5.38. Power to remove directors and officers.

PART D—MISCELLANEOUS

- Sec. 5.40. Repeal of other laws.
 Sec. 5.41. **Amendment**
 Sec. 5.42. Separability.
 Sec. 5.43. Reserve right to amend or repeal.
 Sec. 5.44. General Accounting Office audit: report to Congress.
 Sec. 5.45. Transition rules relating to amendment of certain FCA approval authorities.

PART E—FARM CREDIT SYSTEM INSURANCE CORPORATION

- Sec. 5.51. Definitions.
 Sec. 5.52. Establishment of Farm Credit System Insurance Corporation.
 Sec. 5.53. Board of Directors.
 Sec. 5.54. Commencement of insurance.
 Sec. 5.55. Premiums.
 Sec. 5.56. Certification of premiums.
 Sec. 5.57. Overpayment and underpayment of premiums; remedies.
 Sec. 5.58. General corporate powers.
 Sec. 5.59. Conduct of corporate affairs; examination of System institutions.
 Sec. 5.60. Insurance Fund.
 Sec. 5.61. Powers of Corporation with respect to troubled insured System banks.
 Sec. 5.61A. Oversight actions by the Corporation.
 Sec. 5.61B. Authority to regulate golden parachute and indemnification payments.
 Sec. 5.61C. Corporation as conservator or receiver; certain other powers.
 Sec. 5.62. Investment of funds.
 Sec. 5.63. Exemption from taxation.
 Sec. 5.64. Reports.
 Sec. 5.65. Prohibitions.

TITLE VI—**REPEALED**

TITLE VII—RESTRUCTURING OF SYSTEM INSTITUTIONS

Subtitle A—Merger of Banks Within a District

- Sec. 7.0. Power to merge.
 Sec. 7.1. Board of directors.
 Sec. 7.2. Powers of merged banks.
 Sec. 7.3. Capitalization.
 Sec. 7.4. **Repealed**
 Sec. 7.5. **Transferred**

Subtitle B—Mergers, Transfers of Assets, and Powers of Associations Within a District

CHAPTER 1—TRANSFERS BY FEDERAL LAND BANKS TO FEDERAL LAND BANK ASSOCIATIONS

- Sec. 7.6. Transfer of lending authority.
 Sec. 7.7. Equalization of loan-making powers of certain district associations.

CHAPTER 2—MERGER OF LIKE AND UNLIKE ASSOCIATIONS

- Sec. 7.8. Merger of associations.

CHAPTER 3—RECONSIDERATION

- Sec. 7.9. Reconsideration.

CHAPTER 4—TERMINATION AND DISSOLUTION OF INSTITUTIONS

Sec. 7.10. Termination of System institution status.

Subtitle C—Approval of Disclosure Information and Issuance of Charters by the Farm Credit Administration Board

Sec. 7.11. Approval of disclosure information and issuance of charters.

Subtitle D—Mergers of Like Entities

Sec. 7.12. Merger of similar banks.

Sec. 7.13. Merger of similar associations.

Subtitle E—Taxation of Merger Transactions

Sec. 7.14. Transactions to accomplish mergers exempt from certain State taxes.

TITLE VIII—AGRICULTURAL MORTGAGE SECONDARY MARKET

Sec. 8.0. Definitions.

Subtitle A—Establishment and Activities of Federal Agricultural Mortgage Corporation

Sec. 8.1. Federal Agricultural Mortgage Corporation.

Sec. 8.2. Board of directors.

Sec. 8.3. Powers and duties of Corporation and Board.

Sec. 8.4. Stock issuance.

Sec. 8.5. Certification of agricultural mortgage marketing facilities.

Sec. 8.6. Guarantee of qualified loans.

Sec. 8.7. **[Repealed]**

Sec. 8.8. Standards for qualified loans.

Sec. 8.9. Exemption from restructuring and borrowers rights provisions for pooled loans.

Sec. 8.10. Funding for guarantee; reserves of Corporation.

Sec. 8.11. Supervision, examination, and report of condition.

Sec. 8.12. Securities in credit enhanced pools.

Sec. 8.13. Authority to issue obligations to cover guarantee losses of Corporation.

Sec. 8.14. Federal jurisdiction.

Subtitle B—Regulation of Financial Safety and Soundness of Federal Agricultural Mortgage Corporation

Sec. 8.31. Definitions.

Sec. 8.32. Risk-based capital levels.

Sec. 8.33. Minimum capital level.

Sec. 8.34. Critical capital level.

Sec. 8.35. Enforcement levels.

Sec. 8.36. Mandatory actions applicable to level II.

Sec. 8.37. Supervisory actions applicable to level III.

Subtitle C—Receivership, Conservatorship, and Liquidation of the Federal Agricultural Mortgage Corporation

Sec. 8.41. Conservatorship; liquidation; receivership.

AN ACT To further provide for the farmer-owned cooperative system of making credit available to farmers and ranchers and their cooperatives, for rural residences, and to associations and other entities upon which farming operations are dependent, to provide for an adequate and flexible flow of money into rural areas, and to modernize and consolidate existing farm credit law to meet current and future rural credit needs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Farm Credit Act of 1971”.

POLICY AND OBJECTIVES

SEC. 1.1. [12 U.S.C. 2001] (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 Act 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 5.19(b), 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.

SEC. 1.2. [12 U.S.C. 2002] THE 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 4.25, 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 Act 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 the date of enactment of this Act 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 5.17(a)(2).

TITLE I—FARM CREDIT BANKS

SEC. 1.3. [12 U.S.C. 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 title 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 Act, 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.

SEC. 1.4. [12 U.S.C. 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.

SEC. 1.5. [12 U.S.C. 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 Act 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 Act, 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 Act, 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 Act;

(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 title 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 title or other titles on the basis prescribed in section 4.18; and

(C) lenders that are not Farm Credit System institutions in loans that the bank is authorized to make under this title;

(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 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) 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 title VIII.

SEC. 1.6. [12 U.S.C. 2014] FARM CREDIT BANK CAPITALIZATION.

In accordance with section 4.3A, 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.

SEC. 1.7. [12 U.S.C. 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 7.6(a).

(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 Act.

(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 title or other titles of this Act on the basis prescribed in section 4.18 of this Act.

(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 title 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 the effective date of the Farm Credit Act Amendments of 1980.

SEC. 1.8. [12 U.S.C. 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.

SEC. 1.9. [12 U.S.C. 2017] ELIGIBILITY.

The credit and financial services authorized in this title 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.

SEC. 1.10. [12 U.S.C. 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 title 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.

SEC. 1.11. [12 U.S.C. 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 prod-

ucts 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 title 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 title or title II, equipment or facilities needed in the operations of such persons.

SEC. 1.12. [12 U.S.C. 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 7.6, and other financing institution described in section 1.7(b)(1)(B) in the district in which the bank is located to cover the costs of making premium payments under part E of title 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.

SEC. 1.13. [12 U.S.C. 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 1.7(a) 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.

SEC. 1.14. [12 U.S.C. 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.

SEC. 1.15. [12 U.S.C. 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).

TITLE II—FARM CREDIT ASSOCIATIONS**Subtitle A—Production Credit Associations****SEC. 2.0. [12 U.S.C. 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 subtitle.

(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 subtitle; 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.

SEC. 2.1. [12 U.S.C. 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.

SEC. 2.2. [12 U.S.C. 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 Act 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 Act;

(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 non-voting 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 subtitle 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 title or other titles of this Act on the basis prescribed in section 4.18 of this Act;

(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 the 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 of 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 Act, 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 title VIII.

SEC. 2.3. [12 U.S.C. 2074] PRODUCTION CREDIT ASSOCIATION CAPITALIZATION.

(a) **IN GENERAL.**—In accordance with section 4.3A, 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.

SEC. 2.4. [12 U.S.C. 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 subtitle 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) hereof 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 4.17 of this Act, 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.

SEC. 2.5. [12 U.S.C. 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.

SEC. 2.6. [12 U.S.C. 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.

SEC. 2.7. [12 U.S.C. 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.

Subtitle B—Federal Land Bank Associations

SEC. 2.10. [12 U.S.C. 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 1.7(a), 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 FCA.—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.

SEC. 2.11. [12 U.S.C. 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.

SEC. 2.12. [12 U.S.C. 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 Act 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 Act;
- (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 Act, 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 title VIII.

SEC. 2.13. [12 U.S.C. 2094] FEDERAL LAND BANK ASSOCIATION CAPITALIZATION.

In accordance with section 4.3A, 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.

SEC. 2.14. [12 U.S.C. 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.

SEC. 2.15. [12 U.S.C. 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.

SEC. 2.16. [12 U.S.C. 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).

TITLE III—BANKS FOR COOPERATIVES**PART A—BANKS FOR COOPERATIVES**

SEC. 3.0. [12 U.S.C. 2121] ESTABLISHMENT; TITLES; BRANCHES.—(a) 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 Act 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.

(b) 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.

SEC. 3.1. [12 U.S.C. 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 Act 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 Act, 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 Act, 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 title 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 title or other titles of this Act on the basis prescribed in section 4.18 of this Act.
- (B)(i) Participate in any loan of a type otherwise authorized under this title that is made to a similar entity by any institution in the business of extending credit, including purchases of partici-

pations 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 Act, 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 3.8, is functionally similar to an entity eligible for a loan under section 3.8 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 non-member bank (within the meaning of section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or, to the extent necessary to facilitate transactions which may be financed under section 3.7(b) of this Act, 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 and approved by the Farm Credit Administration, 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 3.7(b) of this Act, 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 3.7(b) of this Act: *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.

SEC. 3.2. [12 U.S.C. 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.

SEC. 3.3. [12 U.S.C. 2124] BANK FOR COOPERATIVES STOCK; VALUE; CLASSES OF STOCK; VOTING; EXCHANGE.—(a) 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) 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) Voting stock may be issued or transferred to and held only by (i) cooperative associations eligible to borrow from the banks (ii) other categories of persons and entities described in sections 3.7 and 3.8 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) 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 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 may be issued to parties to whom voting stock may not be issued.

SEC. 3.4. [12 U.S.C. 2125] DIVIDENDS.—Dividends may be payable only on nonvoting investment stock, other than stock held by the Farm Credit Administration, if declared by the board of directors of the bank, subject to the general direction of the Farm Credit Administration.

SEC. 3.5. [12 U.S.C. 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 the year of the enactment of this Act 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.

SEC. 3.6. [12 U.S.C. 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 Act 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.

SEC. 3.7. [12 U.S.C. 2128] LENDING POWER.—(a) 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)(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, prod-

ucts, or supplies are originally sourced, where reasonably available, from one or more eligible cooperative associations described in section 3.8(a) 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 3.8(a) (including, for the purpose of facilitating its domestic business operations only, a cooperative or other entity described in section 3.8(b)(1)(A)) 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 Act.

(4)² 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) 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) The regulations of the Farm Credit Administration implementing subsection (b) of this section and the other provisions of this title relating to the authority under subsection (b) of this sec-

²Margin so in law.

tion may not confer upon the banks for cooperatives powers and authorities greater than those specified in this title. 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 ensure that such regulations conform to national banking policies, objectives, and limitations.

(e) Notwithstanding any other provision of this title, 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) 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.

SEC. 3.8. [12 U.S.C. 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 histori-

cally 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 3.7.

(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 3.9, 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 3.7(a), 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 the date of the enactment of this subsection, of cooperatives and other entities for any other credit assistance under Federal law.

SEC. 3.9. [12 U.S.C. 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.

SEC. 3.10. [12 U.S.C. 2131] INTEREST RATES; SECURITY; LIEN; CANCELLATION; AND APPLICATION ON INDEBTEDNESS.—(a) 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) 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) 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) 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.

SEC. 3.11. [12 U.S.C. 2132] EARNINGS AND RESERVES; APPLICATION OF SAVINGS.—

(a) 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 the Internal Revenue Code, or payment of such per centum of patronage refunds in cash, as the board may determine.

(b) The net savings of each bank for cooperatives, after the earnings for the fiscal year have been applied in accordance with subsection (a) 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) 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 the date of enactment of this Act; 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) 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) 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.

SEC. 3.12. [12 U.S.C. 2133] DISTRIBUTION OF ASSETS AND 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 banks, 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.

SEC. 3.13. [12 U.S.C. 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.

PART B—NATIONAL BANKS FOR COOPERATIVES

SEC. 3.20. [12 U.S.C. 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 Act.

(c) **OPERATION.**—The consolidated bank shall be organized and operated on a cooperative basis.

[Section 3.21 was repealed by section 5411(14) of Public Law 115–334.]

SEC. 3.22. [12 U.S.C. 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.

SEC. 3.23. [12 U.S.C. 2144] CONSOLIDATION OF FUNCTIONS.

Subject to section 3.22, to the greatest extent practicable, the functions of the consolidated bank shall be consolidated in the central office of the bank.

SEC. 3.24. [12 U.S.C. 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.

SEC. 3.25. [12 U.S.C. 2146] CAPITALIZATION.

In accordance with section 4.3A, 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.

SEC. 3.26. [12 U.S.C. 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 the date of the enactment of this section, establish separate patronage pools consisting of loans to eligible borrowers located in each constituent farm credit district (as such district existed on the date of the enactment of this section); and

(2) allocate revenues, expenses, and net savings among such pools on an equitable basis.

SEC. 3.27. [12 U.S.C. 2148] TRANSACTIONS TO ACCOMPLISH THE 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).

SEC. 3.28. [12 U.S.C. 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 Ag-

ricultural Credit Act of 1987 (12 U.S.C. 2121 note; Public Law 100–233) with respect to such loans or borrowers.

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE
CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

【Section 4.0 was repealed by section 5411(17) of Public Law 115–334. Section 4.1 was repealed by section 207(a)(1) of Public Law 100–233.】

SEC. 4.2. 【12 U.S.C. 2153】 POWER TO BORROW; ISSUE 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 4.3(c) by the notes, mortgages, and security instruments it holds in the performance of its functions under this Act 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 title of this Act 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 Act 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.

SEC. 4.3. [12 U.S.C. 2154] CAPITAL ADEQUACY OF BANKS AND ASSOCIATIONS.—(a) 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)(1) Failure of a System institution to maintain capital at or above its minimum level as established under the 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 Act.

(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) 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 Act or real or personal property acquired in connection with loans made under this Act, 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.

SEC. 4.3A. [12 U.S.C. 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 4.9A 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 Act, 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 4.3(a);

(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 Act;

(ii) persons and entities eligible to borrow from the banks for cooperatives, as described in section 3.3(c)(ii);

(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 4.3(a); 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 4.3(a).

(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 THE 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 the date of enactment of this paragraph 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 the date of enactment of this paragraph 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 title 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 Act 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 Act (other than section 4.9A), the provision of this section shall control.

SEC. 4.4. [12 U.S.C. 2155] LIABILITY OF BANKS; UNITED STATES NOT LIABLE.—(a)(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 title of this Act.

(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 4.3 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) 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) The United States shall not be liable or assume any liability directly or indirectly thereon.

(d) Beginning 5 years after the date of the enactment of this subsection, 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.

【Section 4.5 - Repealed by section 204 of P.L. 100-233】

SEC. 4.6. 【12 U.S.C. 2157】 BONDS AS INVESTMENTS.—The bonds, debentures, and other similar obligations issued under the authority of this Act shall be lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits.

SEC. 4.7. 【12 U.S.C. 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 Act 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 title 12, United States Code.

SEC. 4.8. [12 U.S.C. 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 System-wide 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.

SEC. 4.9. [12 U.S.C. 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 inter-system 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 4.25, in effect immediately before the date of the enactment of the Agricultural Credit Act of 1987.

(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 Act, 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 the date of the enactment of this section 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.

SEC. 4.9A. [12 U.S.C. 2162] PROTECTION OF BORROWER STOCK.

(a) **RETIREMENT OF STOCK.**—Notwithstanding any other section of this Act, each institution of the Farm Credit System, when retiring eligible borrower stock in accordance with this Act, 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 part value for application against a loan in default;

(2) to cancel borrow stock at par value under section 4.14B; 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 entities 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 the date of the enactment of this section;

(B) is issued or allocated after the date of the enactment of this section, 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 4.3A; or

(ii) the date that is 9 months after the date of the enactment of this section;

(C) was, after January 1, 1983, but before the date of the enactment of this section, 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 the date of the enactment of this section.

(3) INSTITUTION.—The term “institution” means a bank or association chartered under this Act.

(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 Act, 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.

PART B—DISSOLUTION

SEC. 4.12. [12 U.S.C. 2183] DISSOLUTION; VOLUNTARY LIQUIDATION; MERGERS; RECEIVERSHIPS; AND CONSERVATORS.—(a) 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 Act.

(b) 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 5.51(3)) 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 the date of the enactment of the Agricultural Credit Act of 1987, 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 Act 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) 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.

SEC. 4.12A. [12 U.S.C. 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.

PART C—RIGHTS OF BORROWERS; LOAN RESTRUCTURING

SEC. 4.13. [12 U.S.C. 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 4.9A, 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.

SEC. 4.13A. [12 U.S.C. 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.

SEC. 4.13B. [12 U.S.C. 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 4.14.

(b) **DISTRESSED LOANS.**—Each qualified lender that has a distressed loan outstanding that is subject to restructuring requirements under this Act 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 4.14A;
- (2) if restructuring is denied, the reasons for such action; and
- (3) the borrower's right to review under section 4.14.

SEC. 4.14. [12 U.S.C. 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 4.13B 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 4.13B, 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.

SEC. 4.14A. [12 U.S.C. 2202a] RESTRUCTURING DISTRESSED LOANS.

(a) DEFINITIONS.—As used in this part and section 4.36:

(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 non-performing 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 title 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 the date of enactment of this subparagraph 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 4.14, 4.14B, 4.14D, and 4.36 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 1.7(b)(1)(B) but only with respect to loans discounted or pledged under section 1.7(b)(1).

(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 the date of the enactment of this section, 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 4.14 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 the date of the enactment of this section.

(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 the date of the enactment of this section 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.

SEC. 4.14B. [12 U.S.C. 2202b] EFFECT OF RESTRUCTURING ON BORROWER STOCK.

(a) FARM CREDIT BANK.—If a Farm Credit Bank forgives and writes off, under section 4.14A, 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, 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 4.14A, 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.

【Section 4.14C was repealed by section 5411(23) of Public Law 115-334.】

SEC. 4.14D. [12 U.S.C. 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 4.14.

(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.

SEC. 4.14E. [12 U.S.C. 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.

PART D—ACTIVITIES OF INSTITUTIONS OF THE SYSTEM

SEC. 4.15. [12 U.S.C. 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.

SEC. 4.17. [12 U.S.C. 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 Act. 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 Act.

SEC. 4.18. [12 U.S.C. 2206] PARTICIPATION LOANS.—Notwithstanding any other provisions of this Act, the terms of any loan participated in by two or more Farm Credit System institutions operating under different titles of this Act, 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 title under which the institution that originates the loan operates.

SEC. 4.18A. [12 U.S.C. 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 3.1(11)(B)(iii).

(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 Act, any Farm Credit Bank or direct lender association chartered under this Act may participate in any loan of a type otherwise authorized under title 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 1.11(b) or 2.4(a)(2).

SEC. 4.19. [12 U.S.C. 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.

SEC. 4.20. [12 U.S.C. 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.

PART E—SERVICE ORGANIZATIONS

SEC. 4.25. [12 U.S.C. 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 Act: *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 Act. 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.

SEC. 4.26. [12 U.S.C. 2212] POWERS OF THE 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 Act to charters or articles of service corporations.

SEC. 4.27. [12 U.S.C. 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 Act.

SEC. 4.28. [12 U.S.C. 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 1.15, 2.16, and 3.13 of this Act 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.

SEC. 4.28A. [12 U.S.C. 2214a] DEFINITION OF BANK.

In this part, the term “bank” includes each association operating under title II.

PART F—SALE OF INSURANCE

SEC. 4.29. [12 U.S.C. 2218] LINES OF INSURANCE.—(a)(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 titles I and II 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) 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 Act in an effective and efficient manner;

(B) there exists the probability that any insurance program under this Act 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 bor-

rowers, 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 non-affiliated insurance agent, broker, or insurer.

(c) Notwithstanding any provision of this section to the contrary, any bank or association that on the date of enactment of the Farm Credit Act Amendments of 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 of enactment and may continue to service such coverages until their expiration.

PART G—MISCELLANEOUS

SEC. 4.35. [12 U.S.C. 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.

SEC. 4.36. [12 U.S.C. 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 sec-

tion 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.

SEC. 4.37. [12 U.S.C. 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 the date of the enactment of this section), 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.

SEC. 4.38. [12 U.S.C. 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.

SEC. 4.39. [12 U.S.C. 2219d] ENCOURAGEMENT OF CONSERVATION PRACTICES.

At the time a System institution or an agricultural mortgage loan originator (as defined in section 8.0) 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.

TITLE V—FARM CREDIT ADMINISTRATION ORGANIZATION

PART A—DISTRICT ORGANIZATION

【Section 5.0 was transferred by section 901(r) of P.L. 100–399 (102 Stat. 1008) and sections 5.1 through 5.6 were repealed by section 409(d) of P.L. 100–399 (102 Stat. 1003)】

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

SEC. 5.7. [12 U.S.C. 2241] THE FARM CREDIT ADMINISTRATION.—The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be com-

posed 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 Act.

SEC. 5.8. [12 U.S.C. 2242] THE FARM CREDIT ADMINISTRATION BOARD; APPOINTMENT; TERM OF OFFICE; ORGANIZATION AND COMPENSATION.—(a) 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) 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) 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) 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 of the United States Code. 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 of the United States Code. 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 5.11 of this Act.

(e) 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.

SEC. 5.9. [12 U.S.C. 2243] POWERS OF THE 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 Act 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.

SEC. 5.10. [12 U.S.C. 2244] CHAIRMAN; RESPONSIBILITIES; GOVERNING STANDARDS.—

(a)(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 4.2;

(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) In carrying out responsibilities under this Act, 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) The Chairman of the Board shall enforce the rules, regulations, and orders of the Board. Except as provided in section 518

of title 28 of the United States Code, 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.

SEC. 5.11. [12 U.S.C. 2245] ORGANIZATION OF THE FARM CREDIT ADMINISTRATION.

(a) **POLICIES OF THE BOARD.**—The Chairman of the Farm Credit Administration Board, in carrying out the powers and duties vested in the Chairman by this Act, 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, United States Code. 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 3(q) of the Federal Deposit Insurance Act.

(C) **ETHICS IN GOVERNMENT.**—The officers and employees of the agency shall be—

(i) subject to the Ethics in Government Act of 1978; 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, United States Code.

(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 Act 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 5.15.

SEC. 5.12. [12 U.S.C. 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 the Federal Advisory Committee Act 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.

SEC. 5.13. [12 U.S.C. 2248] SEAL.—The Farm Credit Administration shall have a seal, as adopted by the Board, which shall be judicially noted.

SEC. 5.14. [12 U.S.C. 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 Act. 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 5.15(b) of this Act and shall be available to the Administration in the same manner and for the same purposes as the funds collected under section 5.15(a) of this Act.

SEC. 5.15. [12 U.S.C. 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 Act 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 title 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. 901 note), 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.

SEC. 5.16. [12 U.S.C. 2251] QUARTERS AND FACILITIES FOR THE FARM CREDIT ADMINISTRATION.

(a) 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) As an alternate to the rental of quarters under section 5.14, 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 5.15 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.

SEC. 5.17. [12 U.S.C. 2252] ENUMERATED POWERS.—(a) 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 Act:

(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 Act, issue and approve amendments to Federal charters of institutions of the System; approve change in names of banks operating under this Act; 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 7.0 of this Act; approve mergers and any related activities as provided for in title 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 5.19 of this Act, and on the manner and extent to which the purposes and objectives of this Act 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 4.19(b) Federal land banks and Federal intermediate credit banks under section 4.19(b) of this Act 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 4.2 of this Act 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 Act 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 Act.

(10) Exercise the powers conferred on it under part C of this title 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 Act.

(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 title 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 title 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 re-assignment); 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)³ 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 7.7.

(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 7.7(a)(2).

(b) 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)(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,

³Effective January 1, 2010, sec. 5407(b) of the Food, Conservation, and Energy Act of 2008, Public Law 102-246, 122 Stat. 1921, adds para. (15).

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)(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 3.7(b) or the other provisions of title III relating to the authority under section 3.7(b) conforms to national banking policies, objectives, and limitations, simultaneously with promulgation of any such regulation under this Act, and simultaneously with promulgation of any regulation implementing section 1.7(b), 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 regulation 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.

【Section 5.18 was repealed by section 5411(30) of Public Law 115-334.】

SEC. 5.19. 【12 U.S.C. 2254】 EXAMINATIONS.—(a) 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 anal-

ysis 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 Act 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 Act, 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, the Federal Reserve Act, and Federal Deposit Insurance Act, and other provisions of law and shall have the same powers and privileges as are vested in such examiners by law.

(b) 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) 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) On receipt of a request made under section 5.59(b)(1)(B) 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 Act, 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.

SEC. 5.20. [12 U.S.C. 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.

SEC. 5.21. [12 U.S.C. 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.

SEC. 5.22. [12 U.S.C. 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.

SEC. 5.22A. [12 U.S.C. 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 the date of the enactment of this section, 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.

SEC. 5.23. [12 U.S.C. 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.

SEC. 5.24. [12 U.S.C. 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 Act, 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 Act.

PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

SEC. 5.25. [12 U.S.C. 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 direc-

tor, 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.

SEC. 5.26. [12 U.S.C. 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 5.25, 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 5.25, 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 5.25, and such court shall have jurisdiction to issue such injunction.

SEC. 5.27. [12 U.S.C. 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 5.26, 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.

SEC. 5.28. [12 U.S.C. 2264] SUSPENSION OR REMOVAL OF DIRECTOR OR OFFICER.—(a) 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) 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) 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) 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) 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.

SEC. 5.29. [12 U.S.C. 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 may 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 5.28. 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.

SEC. 5.29A. [12 U.S.C. 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 5.28 or 5.29, 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 8(e)(7)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(7)(A)(i));
- (2) any institution subject to section 8(e)(7)(A)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(7)(A)(ii));
- (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 Act;
- (6) any appropriate Federal financial institutions regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(7)(D)));
- (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 8(e)(7)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(7)(D))) 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 be become 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 of that order.

SEC. 5.30. [12 U.S.C. 2266] HEARINGS AND JUDICIAL REVIEW.—(a) Any hearing provided for in this part (other than the hearing provided for in section 5.29) 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 of the United States Code. 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) 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 5.29) 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 of the United States Code. 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 of the United States Code. 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 of the United States Code.

(c) 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.

SEC. 5.31. [12 U.S.C. 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 4.3(b)(2), 4.3A(e), or 4.14A(h) shall be treated as an effective and outstanding order issued under section 5.25 that has become final.

SEC. 5.31A. [12 U.S.C. 2267a] JURISDICTION OVER INSTITUTION-AFFILIATED PARTIES.

(a) **IN GENERAL.**—For purposes of sections 5.25, 5.26, and 5.32, 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 the date of enactment of this section.

SEC. 5.32. [12 U.S.C. 2268] PENALTY.—(a) 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 5.25 or 5.26 of this Act, 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 Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than \$500 per day for each day during which such viola-

tion 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) 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) 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 of the United States Code. 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) 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 of the United States Code. Final orders of the Farm Credit Administration issued under subsection (c) shall be reviewable under chapter 7 of title 5, United States Code.

(e) 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) The Farm Credit Administration shall promulgate regulations establishing procedures necessary to implement section 5.31 and this section.

(g) All penalties collected under authority of this section shall be covered into the Treasury of the United States.

(h) For purposes of this section, any directive issued under section 4.3(b)(2), 4.3A(e), or 4.14A(h) shall be treated as an order that has become final and was issued under section 5.25.

SEC. 5.33. [12 U.S.C. 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 5.28 or 5.29 of this Act, 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.

SEC. 5.34. [12 U.S.C. 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 5.28 or 5.29 of this Act, 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.

SEC. 5.35. [12 U.S.C. 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 5.30(b) of this Act, 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 5.30(b) of this Act, or an order issued under section 5.29 of this Act;

(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 1.2 of this Act, any service organization chartered under part E of title IV of this Act, 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 5.61.

SEC. 5.36. [12 U.S.C. 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.

SEC. 5.37. [12 U.S.C. 2273] ANCILLARY PROVISIONS; SUBPENA POWER; ETC.—In the course of or in connection with any proceeding under this part or any examination or investigation under this Act, 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.

SEC. 5.38. [12 U.S.C. 2274] POWER TO REMOVE DIRECTORS AND OFFICERS.

Notwithstanding any other provision of this Act, a Farm Credit Bank board, officer, or employee shall not remove any director or officer of any association.

PART D—MISCELLANEOUS

SEC. 5.40. REPEAL.—(a) 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 are hereby repealed. 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 shall be deemed to refer to comparable provisions of this Act.

(b) 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 shall be continuing and remain valid until superseded, modified, or replaced under the authority of this Act. 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.

SEC. 5.41. [Omitted Amendment]

SEC. 5.42. SEPARABILITY.—If any provision of this Act, 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.

SEC. 5.43. RESERVE RIGHT TO AMEND OR REPEAL.—The right to alter, amend, or repeal any provision or all of this Act is expressly reserved.

[Section 5.44 was repealed by section 5411(36) of Public Law 115-334.]

SEC. 5.45. [12 U.S.C. 2275a] TRANSITION RULES RELATING TO AMENDMENT OF CERTAIN FCA APPROVAL AUTHORITIES.

(a) **IN GENERAL.**—Any approvals granted by the Farm Credit Administration before the date of the enactment of this section 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 the date of the enactment of this section.

(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 5.17(a)(5).

PART E—FARM CREDIT SYSTEM INSURANCE CORPORATION

SEC. 5.51. [12 U.S.C. 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 5.52.

(3) **INSURED OBLIGATION.**—The term “insured obligation” means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 4.2—

(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 4.2 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.

SEC. 5.52. [12 U.S.C. 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 4.2 on behalf of one or more System banks all of which are entitled to the benefits of insurance under this part.

SEC. 5.53. [12 U.S.C. 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.

SEC. 5.54. [12 U.S.C. 2277a-3] COMMENCEMENT OF INSURANCE.

Effective beginning on January 1, 1989, or 12 months after the date of the enactment of this part, 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 title of this Act 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.

SEC. 5.55. [12 U.S.C. 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 Cor-

poration 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 ⁴)—

(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 7.6, 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 1.7(b)(1)(B) 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.—

⁴ So in original. Probably should be “Corporation”.

(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 of each insured system 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 Al-

located 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.

SEC. 5.56. [12 U.S.C. 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 5.55(a)(4));

(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 5.55(a)(4));

(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.

SEC. 5.57. [12 U.S.C. 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 5.56, 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 5.56 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 Act 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.

SEC. 5.58. [12 U.S.C. 2277a-7] GENERAL CORPORATE POWERS.

On the date of the enactment of this part, 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 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 1.12(b) (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

SEC. 5.59. [12 U.S.C. 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 7.6, 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 Act, 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.

(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.

SEC. 5.60. [12 U.S.C. 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 4.9A.

(3) **PERMISSIVE USES.**—The Corporation may expend amounts in the Insurance Fund to carry out section 5.61 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.

SEC. 5.61. [12 U.S.C. 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 policy-making 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 7.6.

(f) **EFFECTIVE DATE.**—The Corporation shall not exercise any authority under this section during the 5-year period prior to January 1, 1993.

SEC. 5.61A. [12 U.S.C. 2277a-10a] OVERSIGHT ACTIONS BY THE CORPORATION.

(a) **DEFINITIONS.**—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 7.6 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 non-accrual loans.

(b) **CONSULTATION REGARDING PARTICIPATION OF UNDER-CAPITALIZED 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.

SEC. 5.61B. [12 U.S.C. 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 the Internal Revenue Code of 1986 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, United States Code; or

(B) section 1341 or 1343 of title 18, United States Code, 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.

SEC. 5.61C. [12 U.S.C. 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 5.58(9), 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 Act, 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, United States Code.

(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 5.61(d) 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 5.61(d), 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 Act.

(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 4.4 on consolidated and System-wide bonds issued under subsection (c) or (d) of section 4.2; 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 7.6, 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 4.9A.

(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, United States Code.

(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, United States Code.

(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 5.61), 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 con-

servator 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 deter-

mined 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 5.61(d) 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, United States Code; 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 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))), 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 re-

spect 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, 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 de-

posit, 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 purchase 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 Act (other than subsection (b)(9) and section 5.61(d)) 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 con-

tracts 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 Act (other than subparagraph (G), paragraph (10), subsection (b)(9), and section 5.61(d)) 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 para-

graphs (9) and (10) or to disaffirm or repudiate any such contract in accordance with paragraph (1).

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

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

(I) solely because of—

(aa) the status of the party as a non-defaulting party in connection with the insolvency of a System institution that is a party to the contract; or

(bb) the appointment of, or the exercise of rights or powers by, the Corporation as a conservator or receiver of the System institution; and

(II) not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under—

(aa) the contract;

(bb) any other contract between those parties; or

(cc) applicable law.

(ii) TREATMENT.—Notwithstanding the provisions of subparagraphs (B) and (E), no walkaway clause shall be enforceable in a qualified financial contract of a System institution in default.

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

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (B); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the Farm Credit Administration, may prescribe regulations requiring more detailed record-keeping 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 5.61B(a)(1)(A)(ii).

(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 sec-

tion 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402).

(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 enhance-

ments 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 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); 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 re-

spect to a System institution in default or in danger of default, including transactions authorized under subsection (h) and section 5.61(a), 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 5.61(a).

(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 5.61(a); 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 Act.

(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 de-

fault 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 5.61(d)(2), 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 5.61(a) 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 5.61(a)(2)(B)) 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 as-

sumption 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 char-

tered, 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 4.12 or 8.41.

SEC. 5.62. [12 U.S.C. 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.

SEC. 5.63. [12 U.S.C. 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.

SEC. 5.64. [12 U.S.C. 2277a-13] REPORTS.⁵

(a) IN GENERAL.—The Corporation annually shall prepare and submit to Congress a report of the operations of the Corporation, as soon as practicable after the first day of January in each calendar year.

(b) CONTENTS.—Reports submitted under subsection (a) shall include information concerning the—

(1) aggregate amount in the Insurance Fund at the close of the preceding calendar year;

(2) projections of the costs to be incurred by the Corporation during the calendar year; and

(3) estimates of the aggregate amount to be collected as premiums during the calendar year.

SEC. 5.65. [12 U.S.C. 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 Cor-

⁵This report is no longer required to be submitted, effective May 15, 2000. See section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 104-66; 109 Stat. 734).

poration, 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.

[Title VI was repealed by section 5411(39) of Public Law 115-334.]

TITLE VII—RESTRUCTURING OF SYSTEM INSTITUTIONS

Subtitle A—Merger of Banks Within a District

SEC. 7.0. [12 U.S.C. 2279a] POWER TO MERGE.

The banks within a district may merge into a single entity (hereinafter in this title 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.

SEC. 7.1. [12 U.S.C. 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 other directors, which member shall not be a director, officer, employee, or stockholder of a System institution.

SEC. 7.2. [12 U.S.C. 2279a-2] POWERS OF MERGED BANKS.

(a) IN GENERAL.—Except as otherwise provided in this title, 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.

SEC. 7.3. [12 U.S.C. 2279a-3] CAPITALIZATION.

In accordance with section 4.3A, 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.

【Section 7.4 - Repealed by section 408 of P.L. 100-399】

【Section 7.5 - Transferred to appear as section 3.29 by section 408 of P.L. 100-399】

Subtitle B—Mergers, Transfers of Assets, and Powers of Associations Within a District

Chapter 1—Transfers by Federal Land Banks to Federal Land Bank Associations

SEC. 7.6. [12 U.S.C. 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 Act 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 7.0 and 7.8, 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.

SEC. 7.7. [12 U.S.C. 2279c] EQUALIZATION OF LOAN-MAKING POWERS OF CERTAIN DISTRICT ASSOCIATIONS.⁶**(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 title 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 title II within that same chartered territory.

(B) PRODUCTION CREDIT ASSOCIATIONS.—Subject to paragraph (2), any association that under its charter has title I lending authority and that owns a production credit association authorized as of January 1, 2007, to make short- and intermediate-term loans under title 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 title I in the geographic area.

(C) FARM CREDIT BANK.—Notwithstanding section 5.17(a), 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 7.11.

(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).

Chapter 2—Merger of Like and Unlike Associations**SEC. 7.8. [12 U.S.C. 2279c–1] MERGER OF ASSOCIATIONS.**

(a) IN GENERAL.—Two or more associations within the same district, whether or not organized under the same title of this Act,

⁶Effective January 1, 2010, sec. 5407(a) of the Food, Conservation, and Energy Act of 2008, Public Law 102–246, 122 Stat. 1921, adds sec. 7.7.

may merge into a single entity (hereinafter in this title 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 title, a merged association shall—

(A) possess all powers granted under this Act to the associations forming the merged association; and

(B) be subject to all of the obligations imposed under this Act 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 4.3A, 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 4.3A, 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.

Chapter 3—Reconsideration

SEC. 7.9. [12 U.S.C. 2279c-2] RECONSIDERATION.

(a) PERIOD.—A stockholder vote in favor of—

- (1) the merger of districts under this Act;
- (2) the merger of banks within a district under section 7.0;
- (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 7.6 or 7.13;
- (4) the merger of two or more associations under section 7.8;
- (5) the termination of the status of an institution as a System institution under section 7.10; or
- (6) the merger of similar banks under section 7.12;

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.

Chapter 4—Termination and Dissolution of Institutions

SEC. 7.10. [12 U.S.C. 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 Act.

Subtitle C—Approval of Disclosure Information and Issuance of Charters by the Farm Credit Administration Board

SEC. 7.11. [12 U.S.C. 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 title, unless the Board determines that the charter submitted is not consistent with this Act.

Subtitle D—Mergers of Like Entities

SEC. 7.12. [12 U.S.C. 2279f] MERGER OF SIMILAR BANKS.

(a) IN GENERAL.—Banks organized or operating under this Act may merge with banks in other districts operating under the same title 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 7.2 and 7.3 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.

SEC. 7.13. [12 U.S.C. 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 7.8 shall apply to associations merged under this section.

Subtitle E—Taxation of Merger Transactions

SEC. 7.14. [12 U.S.C. 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 title 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.

TITLE VIII—AGRICULTURAL MORTGAGE SECONDARY MARKET

SEC. 8.0. [12 U.S.C. 2279aa] DEFINITIONS.

For purposes of this title:

(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 8.2.

(3) CERTIFIED FACILITY.—The term “certified facility” means—

(A) an agricultural mortgage marketing facility that is certified under section 8.5; or

(B) the Corporation and any affiliate thereof.

(4) CORPORATION.—The term “Corporation” means the Federal Agricultural Mortgage Corporation established in section 8.1.

(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 title.

(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 coopera-

tive, 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 8.6, and sections 8.8 and 8.9, 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 Act; 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 5.51.

Subtitle A—Establishment and Activities of Federal Agricultural Mortgage Corporation

SEC. 8.1. [12 U.S.C. 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.

SEC. 8.2. [12 U.S.C. 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.

SEC. 8.3. [12 U.S.C. 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 title 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 THE 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 THE 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 8.4.

(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, United States Code, 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 8.6.

(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 title.

(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 title.

(14) To establish, acquire, and maintain affiliates (as such term is defined in section 8.11(e)) under applicable State laws to carry out any activities that otherwise would be performed directly by the Corporation under this title.

(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 title.

(d) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks may act as depositaries for, or⁷ 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.

SEC. 8.4. [12 U.S.C. 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.

⁷Section 105(1) of the Farm Credit System Reform Act of 1996 (P.L. 104-105) attempted to amend section 8.3(d) by striking “may act as depositaries for, or” and inserting “shall act as depositaries for, and”. The amendment was not executed because the phrase intended to be stricken does not appear.

(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 8.2(a)(2)(A), 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 8.2(a)(2)(B).

(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 8.10(c)(1).

(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 8.13 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.

SEC. 8.5. [12 U.S.C. 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 Act, 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.

SEC. 8.6. [12 U.S.C. 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 8.8 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 8.8; 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 8.13 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 THE 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 8.0), 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 8.13(a) remains outstanding.

【Section 8.7 - Repealed by section 108(b) of P.L. 104–105】

SEC. 8.8. [12 U.S.C. 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 8.11.

(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 title 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 1,000⁸ 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.

SEC. 8.9. [12 U.S.C. 2279aa-9] EXEMPTION FROM RESTRUCTURING AND BORROWERS RIGHTS PROVISIONS FOR POOLED LOANS.

(a) RESTRUCTURING.—Notwithstanding any other provision of law, sections 4.14, 4.14A, 4.14B, 4.14D, and 4.36 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 4.14A(a)(5)), 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 4.14, 4.14A, 4.14B, 4.14D, and 4.36 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

⁸Section 5410(a) of Public Law 115-334 provides for an amendment to subsection (c)(2) by striking “1,000” and inserting “2,000”. Subsection (b) of such section states: “The amendment made by subsection (a) shall take effect 1 year after the date a report submitted in accordance with section 5414 of this Act indicates that it is feasible to increase the acreage limitation in section 8.8(c)(2) of the Farm Credit Act of 1971 to 2,000 acres.”

refuse to allow the loan to be pooled, thereby retaining rights under sections 4.14, 4.14A, 4.14B, 4.14D, and 4.36, if applicable.

SEC. 8.10. [12 U.S.C. 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 8.13 in order to meet the obligations of the Corporation with respect to any guarantees provided under this title 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 title to recover its costs for performing such administration.

SEC. 8.11. [12 U.S.C. 2279aa-11] SUPERVISION, EXAMINATION, AND REPORT OF CONDITION.

(a) **REGULATION.**—

(1) **AUTHORITY.**—Notwithstanding any other provision of this Act, 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 title, including through the use of the authorities granted to the Farm Credit Administration under—
- (i) part C of title V; and
 - (ii) beginning 6 months after December 13, 1991, section 5.17(a)(9).
- (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 the date of enactment of this paragraph, 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 fi-

nancial 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) DEFINITION OF AFFILIATE.—As used in this title, 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 8.0).

(f) 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.

SEC. 8.12. [12 U.S.C. 2279aa–12] SECURITIES IN CREDIT ENHANCED POOLS.

(a) FEDERAL LAWS.—

(1) APPLICABILITY OF CERTAIN FEDERAL SECURITIES LAWS.—For purposes of section 3(a)(2) of the Securities Act of 1933, 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 or for purposes of the Investment Company Act of 1940.

(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 the date of the enactment of this title, 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 the date of the enactment of this title, 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 title 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.

SEC. 8.13. [12 U.S.C. 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 8.10(c) 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 title.

(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 8.10(c) 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 title.

(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, UNITED STATES CODE.—

(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, United States Code, 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 title.

SEC. 8.14. [12 U.S.C. 2279aa–14] FEDERAL JURISDICTION.

Notwithstanding section 1349 of title 28, United States Code, 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.

Subtitle B—Regulation of Financial Safety and Soundness of Federal Agricultural Mortgage Corporation

SEC. 8.31. [12 U.S.C. 2279bb] DEFINITIONS.

For purposes of this subtitle:

(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 8.11(a)(3).

(4) OFFICE.—The term “Office” means the Office of Secondary Market Oversight of the Farm Credit Administration, established in section 8.11(a).

(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.

SEC. 8.32. [12 U.S.C. 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 8.0(7)(C) 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 8.6(b)(2) (as in effect before the date of the enactment of the Farm Credit System Reform Act of 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 8.35, 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 Corpora-

tion to increase the amount of regulatory capital of the Corporation accordingly.

(c) **RISK-BASED CAPITAL LEVEL.**—For purposes of this subtitle, 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.

SEC. 8.33. [12 U.S.C. 2279bb–2] MINIMUM CAPITAL LEVEL.

(a) **IN GENERAL.**—Except as provided in subsection (b), for purposes of this subtitle, 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 subtitle, 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 subtitle, 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 8.6(d); and

(B) the aggregate amount of qualified loans purchased and held by the Corporation under section 8.3(c)(13).

SEC. 8.34. [12 U.S.C. 2279bb-3] CRITICAL CAPITAL LEVEL.

For purposes of this subtitle, 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 8.33.

SEC. 8.35. [12 U.S.C. 2279bb-4] ENFORCEMENT LEVELS.

(a) **IN GENERAL.**—The Director shall classify the Corporation, for purposes of this subtitle, 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 8.32; and

(B) equals or exceeds the minimum capital level established under section 8.33.

(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 8.34; 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 subtitle on not less than a quarterly basis (and as appropriate under sub-

section (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 8.36 or 8.37, as applicable; and
- (3) stating the reasons for the classification of the Corporation within such level.

SEC. 8.36. [12 U.S.C. 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 8.37), 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 the date of the enactment of this section.

SEC. 8.37. [12 U.S.C. 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 Direc-

tor 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 Act.

(c) EFFECTIVE DATE.—This section shall take effect on January 1, 1992.

Subtitle C—Receivership, Conservatorship, and Liquidation of the Federal Agricultural Mortgage Corporation

SEC. 8.41. [12 U.S.C. 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 4.12(b).

(2) APPLICATION.—In applying section 4.12(b) 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 8.35 as within level III or IV and the alternative actions available under subtitle 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 8.37.

(c) APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) QUALIFICATIONS.—Notwithstanding section 4.12(b), 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 Act 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 avail-

able to a conservator or receiver appointed pursuant to section 4.12(b).

(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 THE 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 title 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 8.11 shall be abolished, and section 8.11(a) and subtitle 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 re-

ceivership, but not later than the conclusion of the receivership and discharge of the receiver.