

Public Law 104-105
104th Congress

An Act

Feb. 10, 1996
[H.R. 2029]

To amend the Farm Credit Act of 1971 to provide regulatory relief, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Farm Credit System Reform Act of 1996”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AGRICULTURAL MORTGAGE SECONDARY MARKET

- Sec. 101. Definition of real estate.
- Sec. 102. Definition of certified facility.
- Sec. 103. Duties of Federal Agricultural Mortgage Corporation.
- Sec. 104. Powers of the Corporation.
- Sec. 105. Federal reserve banks as depositaries and fiscal agents.
- Sec. 106. Certification of agricultural mortgage marketing facilities.
- Sec. 107. Guarantee of qualified loans.
- Sec. 108. Mandatory reserves and subordinated participation interests eliminated.
- Sec. 109. Standards requiring diversified pools.
- Sec. 110. Small farms.
- Sec. 111. Definition of an affiliate.
- Sec. 112. State usury laws superseded.
- Sec. 113. Extension of capital transition period.
- Sec. 114. Minimum capital level.
- Sec. 115. Critical capital level.
- Sec. 116. Enforcement levels.
- Sec. 117. Recapitalization of the Corporation.
- Sec. 118. Liquidation of the Federal Agricultural Mortgage Corporation.

TITLE II—REGULATORY RELIEF

- Sec. 201. Compensation of association personnel.
- Sec. 202. Use of private mortgage insurance.
- Sec. 203. Removal of certain borrower reporting requirement.
- Sec. 204. Reform of regulatory limitations on dividend, member business, and voting practices of eligible farmer-owned cooperatives.
- Sec. 205. Removal of Federal Government certification requirement for certain private sector financings.
- Sec. 206. Borrower stock.
- Sec. 207. Disclosure relating to adjustable rate loans.
- Sec. 208. Borrowers' rights.
- Sec. 209. Formation of administrative service entities.
- Sec. 210. Joint management agreements.
- Sec. 211. Dissemination of quarterly reports.
- Sec. 212. Regulatory review.
- Sec. 213. Examination of farm credit system institutions.
- Sec. 214. Conservatorships and receiverships.
- Sec. 215. Farm Credit Insurance Fund operations.
- Sec. 216. Examinations by the Farm Credit System Insurance Corporation.
- Sec. 217. Powers with respect to troubled insured System banks.

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note.

- Sec. 218. Oversight and regulatory actions by the Farm Credit System Insurance Corporation.
Sec. 219. Farm Credit System Insurance Corporation board of directors.
Sec. 220. Interest rate reduction program.
Sec. 221. Liability for making criminal referrals.

TITLE III—IMPLEMENTATION AND EFFECTIVE DATE

- Sec. 301. Implementation.
Sec. 302. Effective date.

TITLE I—AGRICULTURAL MORTGAGE SECONDARY MARKET

SEC. 101. DEFINITION OF REAL ESTATE.

Section 8.0(1)(B)(ii) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(1)(B)(ii)) is amended by striking “with a purchase price” and inserting “, excluding the land to which the dwelling is affixed, with a value”.

SEC. 102. DEFINITION OF CERTIFIED FACILITY.

Section 8.0(3) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(3)) is amended—

(1) in subparagraph (A), by striking “a secondary marketing agricultural loan” and inserting “an agricultural mortgage marketing”; and

(2) in subparagraph (B), by striking “, but only” and all that follows through “(9)(B)”.

SEC. 103. DUTIES OF FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

Section 8.1(b) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-1(b)) is amended—

(1) in paragraph (2), by striking “and” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(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. 104. POWERS OF THE CORPORATION.

Section 8.3(c) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-3(c)) is amended—

(1) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(2) by inserting after paragraph (12) the following:

“(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.”.

SEC. 105. FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.

Section 8.3 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-3) is amended—

(1) in subsection (d), by striking “may act as depositaries for, or” and inserting “shall act as depositaries for, and”; and

(2) in subsection (e), by striking “Secretary of the Treasury may authorize the Corporation to use” and inserting “Corporation shall have access to”.

SEC. 106. CERTIFICATION OF AGRICULTURAL MORTGAGE MARKETING FACILITIES.

Section 8.5 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-5) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting “(other than the Corporation)” after “agricultural mortgage marketing facilities”; and

(B) in paragraph (2), by inserting “(other than the Corporation)” after “agricultural mortgage marketing facility”; and

(2) in subsection (e)(1), by striking “(other than the Corporation)”.

SEC. 107. GUARANTEE OF QUALIFIED LOANS.

Section 8.6 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-6) is amended—

(1) in subsection (a)(1)—

(A) by striking “Corporation shall guarantee” and inserting the following: “Corporation—

“(A) shall guarantee”;

(B) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(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 standards established under section 8.8; and

“(ii) have been purchased and held by the Corporation.”;

(2) in subsection (d)—

(A) by striking paragraph (4); and

(B) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively; and

(3) in subsection (g)(2), by striking “section 8.0(9)(B))” and inserting “section 8.0(9))”.

SEC. 108. MANDATORY RESERVES AND SUBORDINATED PARTICIPATION INTERESTS ELIMINATED.

(a) **GUARANTEE OF QUALIFIED LOANS.**—Section 8.6 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-6) is amended by striking subsection (b).

(b) **RESERVES AND SUBORDINATED PARTICIPATION INTERESTS.**—Section 8.7 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-7) is repealed.

(c) **CONFORMING AMENDMENTS.**—

(1) Section 8.0(9)(B)(i) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(9)(B)(i)) is amended by striking “8.7, 8.8,” and inserting “8.8”.

(2) Section 8.6(a)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-6(a)(2)) is amended by striking “subject to the provisions of subsection (b)”.

SEC. 109. STANDARDS REQUIRING DIVERSIFIED POOLS.

(a) IN GENERAL.—Section 8.6 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-6) (as amended by section 108) is amended—

- (1) by striking subsection (c); and
- (2) by redesignating subsections (d) through (g) as subsections (b) through (e), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 8.0(9)(B)(i) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa(9)(B)(i)) is amended by striking “(f)” and inserting “(d)”.

(2) Section 8.13(a) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-13(a)) is amended by striking “sections 8.6(b) and” in each place it appears and inserting “section”.

(3) Section 8.32(b)(1)(C) of the Farm Credit Act of 1971 (12 U.S.C. 2279bb-1(b)(1)(C)) is amended—

(A) by striking “shall” and inserting “may”; and

(B) by inserting “(as in effect before the date of the enactment of the Farm Credit System Reform Act of 1996)” before the semicolon.

(4) Section 8.6(b) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-6(b)) (as redesignated by subsection (a)(2)) is amended—

(A) by striking paragraph (4) (as redesignated by section 107(2)(B)); and

(B) by redesignating paragraphs (5) and (6) (as redesignated by section 107(2)(B)) as paragraphs (4) and (5), respectively.

SEC. 110. SMALL FARMS.

Section 8.8(e) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-8(e)) is amended by adding at the end the following: “The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market.”.

SEC. 111. DEFINITION OF AN AFFILIATE.

Section 8.11(e) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-11(e)) is amended—

(1) by striking “a certified facility or”; and

(2) by striking “paragraphs (3) and (7), respectively, of section 8.0” and inserting “section 8.0(7)”.

SEC. 112. STATE USURY LAWS SUPERSEDED.

Section 8.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-12) is amended by striking subsection (d) and inserting the following:

“(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. 113. EXTENSION OF CAPITAL TRANSITION PERIOD.

Section 8.32 of the Farm Credit Act of 1971 (12 U.S.C. 2279bb-1) is amended—

(1) in the first sentence of subsection (a), by striking “Not later than the expiration of the 2-year period beginning on December 13, 1991,” and inserting “Not sooner than the expiration of the 3-year period beginning on the date of enactment of the Farm Credit System Reform Act of 1996,”;

(2) in the first sentence of subsection (b)(2), by striking “5-year” and inserting “8-year”; and

(3) in subsection (d)—

(A) in the first sentence—

(i) by striking “The regulations establishing” and inserting the following:

“(1) IN GENERAL.—The regulations establishing”; and

(ii) by striking “shall contain” and inserting the following: “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”; and

(B) in the second sentence, by striking “The regulations shall” and inserting the following:

“(2) SPECIFICITY.—The regulations referred to in paragraph (1) shall”.

SEC. 114. MINIMUM CAPITAL LEVEL.

Section 8.33 of the Farm Credit Act of 1971 (12 U.S.C. 2279bb-2) is amended to read as follows:

“SEC. 8.33. 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(e); and

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

SEC. 115. CRITICAL CAPITAL LEVEL.

Section 8.34 of the Farm Credit Act of 1971 (12 U.S.C. 2279bb-3) is amended to read as follows:

“SEC. 8.34. 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. 116. ENFORCEMENT LEVELS.

Section 8.35(e) of the Farm Credit Act of 1971 (12 U.S.C. 2279bb-4(e)) is amended by striking “during the 30-month period beginning on the date of the enactment of this section,” and inserting “during the period beginning on December 13, 1991, and ending on the effective date of the risk based capital regulation issued by the Director under section 8.32,”.

SEC. 117. RECAPITALIZATION OF THE CORPORATION.

Title VIII of the Farm Credit Act of 1971 (12 U.S.C. 2279aa et seq.) is amended by adding at the end the following:

“SEC. 8.38. RECAPITALIZATION OF THE CORPORATION.

“(a) **MANDATORY RECAPITALIZATION.**—The Corporation shall increase the core capital of the Corporation to an amount equal to or greater than \$25,000,000, not later than the earlier of—

“(1) the date that is 2 years after the date of enactment of this section; or

“(2) the date that is 180 days after the end of the first calendar quarter that the aggregate on-balance sheet assets of the Corporation, plus the outstanding principal of the off-balance sheet obligations of the Corporation, equal or exceed \$2,000,000,000.

“(b) **RAISING CORE CAPITAL.**—In carrying out this section, the Corporation may issue stock under section 8.4 and otherwise employ any recognized and legitimate means of raising core capital in the power of the Corporation under section 8.3.

“(c) **LIMITATION ON GROWTH OF TOTAL ASSETS.**—During the 2-year period beginning on the date of enactment of this section, the aggregate on-balance sheet assets of the Corporation plus the outstanding principal of the off-balance sheet obligations of the Corporation may not exceed \$3,000,000,000 if the core capital of the Corporation is less than \$25,000,000.

“(d) **ENFORCEMENT.**—If the Corporation fails to carry out subsection (a) by the date required under paragraph (1) or (2) of subsection (a), the Corporation may not purchase a new qualified loan or issue or guarantee a new loan-backed security until the core capital of the Corporation is increased to an amount equal to or greater than \$25,000,000.”.

SEC. 118. LIQUIDATION OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

Title VIII of the Farm Credit Act of 1971 (12 U.S.C. 2279aa et seq.) (as amended by section 117) is amended by adding at the end the following:

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

“SEC. 8.41. CONSERVATORSHIP; LIQUIDATION; RECEIVERSHIP.

“(a) **VOLUNTARY LIQUIDATION.**—The Corporation may voluntarily liquidate only with the consent of, and in accordance with

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12 USC 2279cc.

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) 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.

Claims.

“(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 available 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 receivership, but not later than the conclusion of the receivership and discharge of the receiver.”.

Government
organization.

TITLE II—REGULATORY RELIEF

SEC. 201. COMPENSATION OF ASSOCIATION PERSONNEL.

Section 1.5(13) of the Farm Credit Act of 1971 (12 U.S.C. 2013(13)) is amended by striking “, and the appointment and compensation of the chief executive officer thereof,”.

SEC. 202. USE OF PRIVATE MORTGAGE INSURANCE.

(a) **IN GENERAL.**—Section 1.10(a)(1) of the Farm Credit Act of 1971 (12 U.S.C. 2018(a)(1)) is amended by adding at the end the following:

“(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.”.

(b) **CONFORMING AMENDMENT.**—Section 1.10(a)(1)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2018(a)(1)(A)) is amended by striking “paragraphs (2) and (3)” and inserting “subparagraphs (C) and (D)”.

SEC. 203. REMOVAL OF CERTAIN BORROWER REPORTING REQUIREMENT.

Section 1.10(a) of the Farm Credit Act of 1971 (12 U.S.C. 2018(a)) is amended by striking paragraph (5).

SEC. 204. REFORM OF REGULATORY LIMITATIONS ON DIVIDEND, MEMBER BUSINESS, AND VOTING PRACTICES OF ELIGIBLE FARMER-OWNED COOPERATIVES.

(a) **IN GENERAL.**—Section 3.8(a) of the Farm Credit Act of 1971 (12 U.S.C. 2129(a)) is amended by adding at the end the following: “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) **CONFORMING AMENDMENT.**—Section 3.8(b)(1)(D) of the Farm Credit Act of 1971 (12 U.S.C. 2129(b)(1)(D)) is amended by striking “and (4) of subsection (a)” and inserting “and (4), or under the last sentence, of subsection (a)”.

SEC. 205. REMOVAL OF FEDERAL GOVERNMENT CERTIFICATION REQUIREMENT FOR CERTAIN PRIVATE SECTOR FINANCINGS.

Section 3.8(b)(1)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2129(b)(1)(A)) is amended—

(1) by striking “have been certified by the Administrator of the Rural Electrification Administration to be eligible for such” and inserting “are eligible under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) for”; and

(2) by striking “loan guarantee, and” and inserting “loan guarantee from the Administration or the Bank (or a successor of the Administration or the Bank), and”.

SEC. 206. BORROWER STOCK.

Section 4.3A of the Farm Credit Act of 1971 (12 U.S.C. 2154a) is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (e) the following:

“(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.”

SEC. 207. DISCLOSURE RELATING TO ADJUSTABLE RATE LOANS.

Section 4.13(a)(4) of the Farm Credit Act of 1971 (12 U.S.C. 2199(a)(4)) is amended by inserting before the semicolon at the end the following: “, 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”.

SEC. 208. BORROWERS' RIGHTS.

(a) **DEFINITION OF LOAN.**—Section 4.14A(a)(5) of the Farm Credit Act of 1971 (12 U.S.C. 2202a(a)(5)) is amended—

(1) by striking “(5) **LOAN.**—The” and inserting the following:

“(5) LOAN.—

“(A) IN GENERAL.—Subject to subparagraph (B), the”;
and

(2) by adding at the end the following:

“(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, 4.14C, 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.”.

(b) BORROWERS’ RIGHTS FOR POOLED LOANS.—The first sentence of section 8.9(b) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-9(b)) is amended by inserting “(as defined in section 4.14A(a)(5))” after “application for a loan”.

SEC. 209. FORMATION OF ADMINISTRATIVE SERVICE ENTITIES.

Part E of title IV of the Farm Credit Act of 1971 is amended by inserting after section 4.28 (12 U.S.C. 2214) the following:

12 USC 2214a.

“SEC. 4.28A. DEFINITION OF BANK.

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

SEC. 210. JOINT MANAGEMENT AGREEMENTS.

The first sentence of section 5.17(a)(2)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(2)(A)) is amended by striking “or management agreements”.

SEC. 211. DISSEMINATION OF QUARTERLY REPORTS.

Section 5.17(a)(8) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(8)) is amended by inserting after “except that” the following: “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”.

12 USC 2252
note.**SEC. 212. REGULATORY REVIEW.**

(a) FINDINGS.—Congress finds that—

(1) the Farm Credit Administration, in the role of the Administration as an arms-length safety and soundness regu-

lator, has made considerable progress in reducing the regulatory burden on Farm Credit System institutions;

(2) the efforts of the Farm Credit Administration described in paragraph (1) have resulted in cost savings for Farm Credit System institutions; and

(3) the cost savings described in paragraph (2) ultimately benefit the farmers, ranchers, agricultural cooperatives, and rural residents of the United States.

(b) **CONTINUATION OF REGULATORY REVIEW.**—The Farm Credit Administration shall continue the comprehensive review of regulations governing the Farm Credit System to identify and eliminate, consistent with law, safety, and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on law.

SEC. 213. EXAMINATION OF FARM CREDIT SYSTEM INSTITUTIONS.

The first sentence of section 5.19(a) of the Farm Credit Act of 1971 (12 U.S.C. 2254(a)) is amended by striking “each year” and inserting “during each 18-month period”.

SEC. 214. CONSERVATORSHIPS AND RECEIVERSHIPS.

(a) **DEFINITIONS.**—Section 5.51 of the Farm Credit Act of 1971 (12 U.S.C. 2277a) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

(b) **GENERAL CORPORATE POWERS.**—Section 5.58 of the Farm Credit Act of 1971 (12 U.S.C. 2277a-7) is amended by striking paragraph (9) and inserting the following:

“(9) **CONSERVATOR OR RECEIVER.**—The Corporation may act as a conservator or receiver.”.

SEC. 215. FARM CREDIT INSURANCE FUND OPERATIONS.

(a) **ADJUSTMENT OF PREMIUMS.**—

(1) **IN GENERAL.**—Section 5.55(a) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-4(a)) is amended—

(A) in paragraph (1), by striking “Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year” and inserting the following: “If at the end of any calendar year the aggregate of amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, subject to paragraph (2), the annual premium due from any insured System bank for the calendar year”;

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following:

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

(2) **CONFORMING AMENDMENTS.**—

(A) Section 5.55(b) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-4(b)) is amended—

(i) by striking “Insurance Fund” each place it appears and inserting “Farm Credit Insurance Fund”;

(ii) by striking “for the following calendar year”; and

(iii) by striking “subsection (a)” and inserting “subsection (a)(1)”.

(B) Section 5.56(a) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-5(a)) is amended by striking “section 5.55(a)(2)” each place it appears in paragraphs (2) and (3) and inserting “section 5.55(a)(3)”.

(C) Section 1.12(b) (12 U.S.C. 2020(b)) is amended—

(i) in paragraph (1), by inserting “(as defined in section 5.55(a)(3))” after “government-guaranteed loans”; and

(ii) in paragraph (3), by inserting “(as so defined)” after “government-guaranteed loans” each place such term appears.

(b) ALLOCATION TO INSURED SYSTEM BANKS AND OTHER SYSTEM INSTITUTIONS OF EXCESS AMOUNTS IN THE FARM CREDIT INSURANCE FUND.—Section 5.55 of the Farm Credit Act of 1971 (12 U.S.C. 2277a-4) is amended by adding at the end the following:

“(e) ALLOCATION TO SYSTEM INSTITUTIONS OF EXCESS RESERVES.—

“(1) ESTABLISHMENT OF ALLOCATED INSURANCE RESERVES ACCOUNTS.—There is hereby established in the Farm Credit Insurance Fund an Allocated Insurance Reserves Account—

“(A) for each insured System bank; and

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

“(2) TREATMENT.—Amounts in any Allocated Insurance Reserves Account shall be considered to be part of the Farm Credit Insurance Fund.

“(3) ANNUAL ALLOCATIONS.—If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the average secure base amount for the calendar year (as calculated on an average daily balance basis), 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 the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by the bank that are in accrual status bears to the average principal outstanding for the 3-year period ending on the end of the calendar year on loans made by all insured System banks that are in accrual status (excluding, in each case,

the guaranteed portions of government-guaranteed loans described in subsection (a)(1)(C)).

“(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 beginning more than 8 years after the date on which the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, but not earlier than January 1, 2005, the Corporation may—

“(i) subject to subparagraphs (D) and (F), pay to each insured System bank, in a manner determined by the Corporation, an amount equal to the lesser of—

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

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

“(ii) subject to subparagraphs (C), (E), and (F), 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, of the lesser of—

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

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

“(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 para-

graph (1)(B) of funds in an amount equal to \$56,000,000 (in addition to the amounts described in subparagraph (F)(ii)), 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) WIND DOWN AND TERMINATION.—

“(I) FINAL DISBURSEMENTS.—On disbursement of \$53,000,000 (in addition to the amounts described in subparagraph (F)(ii)) from the Allocated Insurance Reserves Account, the Corporation shall disburse the remaining amounts in the Account, as determined under subparagraph (A)(ii), without regard to the percentage limitations in subclauses (I) and (II) of subparagraph (A)(ii).

“(II) TERMINATION OF ACCOUNT.—On disbursement of \$56,000,000 (in addition to the amounts described in subparagraph (F)(ii)) from the Allocated Insurance Reserves Account, the Corporation shall close the Account established under paragraph (1)(B) and 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.

“(F) INITIAL PAYMENT.—Notwithstanding subparagraph (A), the initial payment made to each payee under subparagraph (A) shall be in such amount determined by the Corporation to be equal to the sum of—

“(i) the total of the amounts that would have been paid if payments under subparagraph (A) had been authorized to begin, under the same terms and conditions, in the first calendar year beginning more than 5 years after the date on which the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, and to continue through the 2 immediately subsequent years;

“(ii) interest earned on any amounts that would have been paid as described in clause (i) from the

date on which the payments would have been paid as described in clause (i); and

“(iii) the payment to be made in the initial year described in subparagraph (A), based on the amount in each Account after subtracting the amounts to be paid under clauses (i) and (ii).”

(c) **TECHNICAL AMENDMENTS.**—Section 5.55(d) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-4(d)) is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking “subsections (a) and (c)” and inserting “subsections (a), (c), and (e)”; and

(B) by striking “a Farm Credit Bank” and inserting “an insured System bank”; and

(2) in paragraphs (1), (2), and (3), by striking “Farm Credit Bank” each place it appears and inserting “insured System bank”.

SEC. 216. EXAMINATIONS BY THE FARM CREDIT SYSTEM INSURANCE CORPORATION.

Section 5.59(b)(1)(A) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-8(b)(1)(A)) is amended by adding at the end the following: “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.”

SEC. 217. POWERS WITH RESPECT TO TROUBLED INSURED SYSTEM BANKS.

(a) **LEAST-COST RESOLUTION.**—Section 5.61(a)(3) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(a)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (F); and

(2) by striking subparagraph (A) and inserting the following:

“(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.”

(b) CONFORMING AMENDMENTS.—Section 5.61(a) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(a)) is amended—

(1) in paragraph (1) by striking “IN GENERAL.—” and inserting “STAND-ALONE ASSISTANCE.—”; and

(2) in paragraph (2)—

(A) by striking “ENUMERATED POWERS.—” and inserting “FACILITATION OF MERGERS OR CONSOLIDATION.—”; and

(B) in subparagraph (A) by striking “FACILITATION OF MERGERS OR CONSOLIDATION.—” and inserting “IN GENERAL.—”.

SEC. 218. OVERSIGHT AND REGULATORY ACTIONS BY THE FARM CREDIT SYSTEM INSURANCE CORPORATION.

The Farm Credit Act of 1971 is amended by inserting after section 5.61 (12 U.S.C. 2279a-10) the following:

“SEC. 5.61A. 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 nonaccrual loans.

“(b) CONSULTATION REGARDING PARTICIPATION OF UNDERCAPITALIZED BANKS IN ISSUANCE OF INSURED OBLIGATIONS.—The Farm Credit Administration shall consult with the Corporation

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

“(c) CONSULTATION REGARDING APPLICATIONS FOR MERGERS AND RESTRUCTURINGS.—

“(1) CORPORATION TO RECEIVE COPY OF TRANSACTION APPLICATIONS.—On receiving an application for a merger or restructuring of an institution, the Farm Credit Administration shall forward a copy of the application to the Corporation.

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

“SEC. 5.61B. AUTHORITY TO REGULATE GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS.

12 USC
2277a-10b.

“(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. 219. FARM CREDIT SYSTEM INSURANCE CORPORATION BOARD OF DIRECTORS.

(a) **IN GENERAL.**—Section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a-2) is amended to read as follows:

“SEC. 5.53. 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.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 5314 of title 5, United States Code, is amended by striking “Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.”.

(2) Section 5315 of title 5, United States Code, is amended by striking “Members, Board of Directors of the Farm Credit System Insurance Corporation.”.

SEC. 220. INTEREST RATE REDUCTION PROGRAM.

Section 351(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1999) is amended—

(a) by striking “SEC. 351. (a) The” and inserting the following:

“SEC. 351. INTEREST RATE REDUCTION PROGRAM.

“(a) **ESTABLISHMENT OF PROGRAM.**—

“(1) **IN GENERAL.**—The”; and

(b) by adding at the end the following:

“(2) **TERMINATION OF AUTHORITY.**—The authority provided by this subsection shall terminate on September 30, 2002.”.

12 USC 2219e.

SEC. 221. LIABILITY FOR MAKING CRIMINAL REFERRALS.

(a) **IN GENERAL.**—Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, that discloses to a Government authority information proffered in good faith that may be relevant to a possible violation of any law or regulation shall not be liable to any person under any law of the United States or any State—

(1) for the disclosure; or

(2) for any failure to notify the person involved in the possible violation.

(b) **NO PROHIBITION ON DISCLOSURE.**—Any institution of the Farm Credit System, or any director, officer, employee, or agent of a Farm Credit System institution, may disclose information to a Government authority that may be relevant to a possible violation of any law or regulation.

TITLE III—IMPLEMENTATION AND EFFECTIVE DATE

SEC. 301. IMPLEMENTATION.

The Secretary of Agriculture and the Farm Credit Administration shall promulgate regulations and take other required actions to implement the provisions of this Act not later than 90 days after the effective date of this Act.

Regulations.
12 USC 2001
note.

SEC. 302. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall become effective on the date of enactment.

12 USC 2013
note.

Approved February 10, 1996.

LEGISLATIVE HISTORY—H.R. 2029:

HOUSE REPORTS: No. 104-421 (Comm. on Agriculture).

CONGRESSIONAL RECORD:

Vol. 141 (1995): Dec. 19, considered and passed House.

Dec. 21, considered and passed Senate, amended.

Vol. 142 (1996): Jan. 3, House concurred in Senate amendment with an amendment.

Jan. 26, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

Feb. 10, Presidential statement.

○