

FARM CREDIT SYSTEM REGULATORY RELIEF ACT OF 1995

DECEMBER 18 (legislative day, DECEMBER 15), 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROBERTS, from the Committee on Agriculture,
submitted the following

R E P O R T

[To accompany H.R. 2029]

The Committee on Agriculture, to whom was referred the bill (H.R. 2029) to amend the Farm Credit Act of 1971 to provide regulatory relief, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Farm Credit System Regulatory Relief Act of 1995”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Regulatory review.
- Sec. 4. Examination of Farm Credit System institutions.
- Sec. 5. Farm Credit Insurance Fund operations.
- Sec. 6. Powers with respect to troubled insured System banks.
- Sec. 7. Farm Credit System Insurance Corporation board of directors.
- Sec. 8. Conservatorship and receiverships.
- Sec. 9. Oversight and regulatory actions by the Farm Credit System Insurance Corporation.
- Sec. 10. Formation of administrative service entities.
- Sec. 11. Requirements for loans sold into the secondary market.
- Sec. 12. Removal of antiquated and unnecessary paperwork requirements.
- Sec. 13. Removal of government certification requirement for certain private sector financing.
- Sec. 14. Reform of regulatory limitations on the dividend, member business, and voting practices of eligible farmer-owned cooperatives.
- Sec. 15. Extension of interest rate reduction program for 5 years.

SEC. 2. REFERENCES.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971.

SEC. 3. REGULATORY REVIEW.

(a) FINDINGS.—The Congress finds that—

(1) the Farm Credit Administration, in its role as an arms-length, safety and soundness regulator, has made considerable progress in reducing the regulatory burden on Farm Credit System institutions;

(2) the efforts of the Farm Credit Administration in this regard have resulted in cost savings for Farm Credit System institutions; and

(3) such cost savings ultimately benefit the Nation's farmers, ranchers, agricultural cooperatives, and rural residents.

(b) REQUIREMENT FOR CONTINUED REVIEW.—The Farm Credit Administration shall continue its comprehensive review of regulations governing the Farm Credit System in order to further identify and eliminate, consistent with safety and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on statute.

SEC. 4. EXAMINATION OF FARM CREDIT SYSTEM INSTITUTIONS.

Section 5.19(a) (12 U.S.C. 2254(a)) is amended by striking “each year” in the first sentence and inserting “every 18 months”.

SEC. 5. FARM CREDIT INSURANCE FUND OPERATIONS.

(a) ADJUSTMENT OF PREMIUMS.—

(1) IN GENERAL.—Section 5.55(a) (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 shall” and inserting “If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, the annual premium due from any insured System bank for that calendar year shall, subject to paragraph (2),”; and

(B) by redesignating paragraph (2) as paragraph (3) and inserting after paragraph (1) the following:

“(2) REDUCED PREMIUMS.—The Corporation, in its sole discretion, 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).—Section 5.55(b) (12 U.S.C. 2277a-4(b)) is amended—

(i) by striking “Insurance Fund” each place such term 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).—Section 5.56(a) (12 U.S.C. 2277a-5(a)) is amended in each of paragraphs (2) and (3) by striking “section 5.55(a)(2)” and inserting “section 5.55(a)(3)”.

(C) SECTION 1.12(b).—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) TECHNICAL AMENDMENT.—Section 5.55(d) (12 U.S.C. 2277a-4(d)) is amended—

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

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

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

(2) by striking “Farm Credit Bank” each subsequent place such term appears and inserting “insured System bank”.

(c) ALLOCATION TO INSURED SYSTEM BANKS AND OTHER SYSTEM INSTITUTIONS OF EXCESS AMOUNTS IN THE FARM CREDIT INSURANCE FUND.—Section 5.55 (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 within the Farm Credit Insurance Fund—

“(A) for each insured System bank; and

“(B) subject to paragraph (5)(C), for all holders, in the aggregate, of Financial Assistance Corporation stock.

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

“(2) 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 such 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.

“(3) ALLOCATION FORMULA.—From the total amount required to be allocated at the end of a calendar year pursuant to paragraph (2)—

“(A) 10 percent of such total amount shall be credited to the Allocated Insurance Reserves Account established under paragraph (1)(B), subject to paragraph (5)(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 such total amount (less any reduction under subparagraph (A)) as the average principal outstanding for the 3-year period ending with the end of such calendar year on loans made by the bank that are in accrual status bears to the average principal outstanding for such 3-year period 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)).

“(4) 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 estimated sum described in paragraph (2) for the calendar year, the Corporation shall cover such expenses and obligations by reducing each Allocated Insurance Reserves Account by the same proportion and expending the amounts so obtained, before expending other monies in the Fund.

“(5) OTHER DISPOSITION OF ACCOUNT FUNDS.—

“(A) IN GENERAL.—Beginning in calendar year 2003, if the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, 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 lesser of—

“(I) 20 percent of the balance in the 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 payment; and

“(ii) subject to subparagraphs (C) and (E), pay to each System bank and association holding Financial Assistance Corporation stock its proportionate share, determined by dividing the number of shares of Financial Assistance Corporation stock held by such 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 under subparagraph (A) if the Corporation determines, in its sole discretion, that such 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 that calendar year to be less than the secure base amount.

“(C) REIMBURSEMENT FOR FINANCIAL ASSISTANCE CORPORATION STOCK.—

“(i) SUFFICIENT FUNDING.—Notwithstanding paragraph (3)(A), upon provision by the Corporation for the accumulation in the account established under paragraph (1)(B) of funds in an amount equal to \$56 million, the Corporation shall not allocate any further funds to such account except to replenish such account in the event that funds are diminished below such amount by the Corporation pursuant to paragraph (4).

“(ii) WIND DOWN AND TERMINATION.—

“(I) FINAL DISBURSEMENTS.—Upon disbursement of a total of \$53 million from such Allocated Insurance Reserves Account, the Corporation shall disburse the remaining amounts in such account, as

determined under paragraph (5)(A)(ii), without regard to the percentage limitation in subclauses (I) and (II) thereof.

“(II) TERMINATION OF ACCOUNT.—Upon disbursement of a total of \$56 million from such Allocated Insurance Reserves Account established under paragraph (1)(B), the Corporation shall close the Allocated Insurance Reserves Account established under paragraph (1)(B) and transfer any remaining funds in such Account to the remaining Allocated Insurance Reserves Accounts in accordance with the formula in paragraph (3)(B) for the calendar year in which the transfer occurs.

“(D) DISTRIBUTION OF PAYMENTS RECEIVED.—Within 60 days after receipt of a payment made under subparagraph (5)(A)(i), each insured System bank, in consultation with its affiliated associations, and taking into account the direct or indirect payment of insurance premiums by such associations, shall develop and implement an equitable plan to distribute payments received pursuant to subparagraph (5)(A)(i) among the bank and its associations.

“(E) EXCEPTION FOR PREVIOUSLY REIMBURSED ASSOCIATIONS.—For purposes of subparagraph (5)(A)(ii), in any Farm Credit District in which the funding bank has reimbursed one or more of its affiliated associations for the previously unreimbursed portion of the Financial Assistance stock held by such associations, the funding bank shall be deemed to be the holder of the shares of Financial Assistance Corporation stock for which it has provided such reimbursement.”.

SEC. 6. POWERS WITH RESPECT TO TROUBLED INSURED SYSTEM BANKS.

(a) LEAST-COST RESOLUTION.—Section 5.61(a)(3) (12 U.S.C. 2277a–10(a)(3)) 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 total amount of such assistance is the least costly to 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 appropriate the opportunity to submit information relating to such determination.

“(B) PROCEDURAL RULES.—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 that 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) COST OF ASSISTANCE.—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 such assistance to the institution under this section.

“(ii) COST OF LIQUIDATION.—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 bank;
- “(II) the date on which a receiver is appointed for the bank; or
- “(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to the bank.

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

“(E) DISCRETIONARY DETERMINATION.—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) (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. 7. FARM CREDIT SYSTEM INSURANCE CORPORATION BOARD OF DIRECTORS.

Section 201 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (106 Stat. 4104–4105) is repealed.

SEC. 8. CONSERVATORSHIP AND RECEIVERSHIPS.

(a) INCLUSION AMONG GENERAL CORPORATE POWERS.—Section 5.58(9) (12 U.S.C. 2277a–7(9)) is amended to read as follows:

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

(b) CONFORMING AMENDMENTS.—Section 5.51 (12 U.S.C. 2277a) is amended by striking paragraph (5) and redesignating paragraph (6) as paragraph (5).

SEC. 9. OVERSIGHT AND REGULATORY ACTIONS BY THE FARM CREDIT SYSTEM INSURANCE CORPORATION.

Part E of title V of the Farm Credit Act of 1971 (12 U.S.C. 2277–2277a–14) is amended by inserting after section 5.61 the following:

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

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

“(b) 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 (a), which may include the following:

“(1) Whether there is a reasonable basis to believe that the 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.

“(6) The length of time that the party was related with 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 involved represents a reasonable payment for services rendered.

“(c) CERTAIN PAYMENTS PROHIBITED.—No Farm Credit System institution may prepay the salary or any liability or legal expense of any institution-related party if such payment—

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

“(2) is made with a view to, or has the result of—

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

“(B) preferring one creditor over another.

“(d) GOLDEN PARACHUTE PAYMENT DEFINED.—As used in this section:

“(1) IN GENERAL.—The term ‘golden parachute payment’ means any payment (or any agreement to make any payment) in the nature of compensation by any Farm Credit System institution for the benefit of any institution-related party under an obligation of the institution that—

“(A) is contingent on the termination of the party’s relationship with the institution; and

“(B) is received on or after the date on which—

“(i) the institution is insolvent;

“(ii) any conservator or receiver is appointed for the institution;

“(iii) the Farm Credit Administration has assigned the institution 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).

“(2) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.—Any payment that would be a golden parachute payment but for the fact that the payment was made before the date referred to in paragraph (1)(B) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any clause of such paragraph.

“(3) CERTAIN PAYMENTS NOT INCLUDED.—The term ‘golden parachute payment’ shall not include—

“(A) any 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;

“(B) any payment made under a bona fide deferred compensation plan or arrangement that the Corporation determines, by regulation or order, to be permissible; or

“(C) any payment made by reason of the death or disability of an institution-related party.

“(e) OTHER DEFINITIONS.—As used in this section:

“(1) INDEMNIFICATION PAYMENT.—The term ‘indemnification payment’ means any payment (or any agreement to make any 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.

“(2) LIABILITY OR LEGAL EXPENSE.—The term ‘liability or legal expense’ means—

“(A) any 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.

“(3) PAYMENT.—The term ‘payment’ means—

“(A) any 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 such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

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

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

“(4) INSTITUTION-RELATED PARTY.—The term ‘institution-related party’ means—

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

“(B) any 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;

“(C) any independent contractor (including any attorney, appraiser, or accountant) who 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; or

“(D) any receiver or conservator of a Farm Credit System institution.

“(f) SPECIAL RULE.—No provision of this section may be construed as prohibiting any Farm Credit System institution from purchasing any commercial insurance policy or fidelity bond, except that such insurance policy or bond shall not cover any legal or liability expense of the institution that is described in subsection (e)(1).

“(g) SPECIAL RULE REGARDING THE FARM CREDIT ADMINISTRATION.—No provision of this section may be construed as limiting the powers, functions, or responsibilities of the Farm Credit Administration.”.

SEC. 10. FORMATION OF ADMINISTRATIVE SERVICE ENTITIES.

Part E of title IV (12 U.S.C. 2211–2214) is amended by adding at the end the following:

“SEC. 4.28A. DEFINITION OF BANK.

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

SEC. 11. REQUIREMENTS FOR LOANS SOLD INTO THE SECONDARY MARKET.

(a) BORROWER STOCK.—Section 4.3A (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.—Notwithstanding any other provision of this section:

“(1) GENERAL RULE.—Subject to paragraph (2), the bylaws adopted by any bank or association under subsection (b) may provide—

“(A) for any loan made on or after the date of the enactment of this subsection that is designated, at the time the loan is made, for sale into a secondary market under title VIII or otherwise, that no voting stock or participation certificate purchase requirement shall apply to the borrower of the loan; and

“(B) for any loan made before the date of the enactment of this subsection that is sold into a secondary market under title VIII or otherwise, 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) EXCEPTION.—If a loan designated for sale as described in paragraph (1)(A) is not sold into a secondary market within 180 days after the designation, the voting stock or participation certificate purchase requirement that would otherwise apply to the loan in the absence of bylaw provisions adopted under paragraph (1)(A) shall be effective, except that the bylaws may provide that if such a loan is thereafter sold into a secondary market, all outstanding voting stock or participation certificates held by the borrower with respect to such loan shall, subject to subsection (d)(1), be retired.”.

(b) BORROWER RIGHTS.—

(1) IN GENERAL.—Section 4.14A(a)(5) (12 U.S.C. 2202a(a)(5)) is amended to read as follows:

“(5) LOAN.—

“(A) IN GENERAL.—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 OF LOANS DESIGNATED FOR SALE INTO A SECONDARY MARKET.—The term ‘loan’ does not include a loan made on or after the date of enactment of this subparagraph that, at the time the loan is made, is designated for sale into a secondary market under title VIII or otherwise, except as provided in subparagraph (C).

“(C) SPECIAL RULE.—If a loan designated for sale into a secondary market is not sold into a secondary market within 180 days after such designation, the provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 that would apply to the loan in the absence of subparagraph (B) shall apply to the loan until the loan is so sold.”

(2) CONFORMING AMENDMENT.—Section 8.9(b) (12 U.S.C. 2279aa–9(b)) is amended by inserting “(as defined in section 4.14A(a)(5))” after “At the time of application for a loan”.

SEC. 12. REMOVAL OF ANTIQUATED AND UNNECESSARY PAPERWORK REQUIREMENTS.

(a) DISCLOSURE ON ADJUSTABLE RATE LOANS.—Section 4.13(a)(4) (12 U.S.C. 2199(a)(4)) is amended by inserting “, except that any regulation of the Farm Credit Administration implementing this paragraph shall include a provision permitting notice to a borrower of a change in the interest rate applicable to the borrower’s loan to be made within a reasonable time after the effective date of the change” before the semicolon.

(b) COMPENSATION OF ASSOCIATION PERSONNEL.—Section 1.5(13) (12 U.S.C. 2013(13)) is amended by striking “and the appointment and compensation of the chief executive officer thereof.”

(c) JOINT MANAGEMENT AGREEMENTS.—Section 5.17(a)(2)(A) (12 U.S.C. 2252(a)(2)(A)) is amended in the 1st sentence by striking “or management agreements”.

(d) REMOVAL OF CERTAIN BORROWER REPORTING REQUIREMENTS.—Section 1.10(a) (12 U.S.C. 2018(a)) is amended by striking paragraph (5).

(e) USE OF PRIVATE MORTGAGE INSURANCE.—

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

“(D) PRIVATE MORTGAGE INSURANCE.—Loans 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) CONFORMING AMENDMENT.—Section 1.10(a)(1)(A) (12 U.S.C. 2018(a)(1)(A)) is amended by striking “paragraphs (2) and (3)” and inserting “subparagraphs (C) and (D)”.

(f) DISSEMINATION OF QUARTERLY REPORTS.—Section 5.17(a)(8) (12 U.S.C. 2252(a)(8)) is amended by inserting “the requirements of the Farm Credit Administration governing the dissemination to stockholders of quarterly reports of System institutions may not be more burdensome or costly than the requirements applicable to national banks, and” after “except that”.

SEC. 13. REMOVAL OF GOVERNMENT CERTIFICATION REQUIREMENT FOR CERTAIN PRIVATE SECTOR FINANCING.

Section 3.8(b)(1)(A) (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 for”; and

(2) by striking “loan guarantee, and” and inserting “loan guarantee from such agencies (or their successors), and”.

SEC. 14. REFORM OF REGULATORY LIMITATIONS ON THE DIVIDEND, MEMBER BUSINESS, AND VOTING PRACTICES OF ELIGIBLE FARMER-OWNED COOPERATIVES.

(a) IN GENERAL.—Section 3.8(a) (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 the preceding sentence, continue to be so 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) (12 U.S.C. 2129(b)(1)(D)) is amended by inserting “, or under the last sentence,” after “(4)”.

SEC. 15. EXTENSION OF INTEREST RATE REDUCTION PROGRAM FOR 5 YEARS.

Section 1320 of the Food Security Act of 1985 (7 U.S.C. 1999 note) is amended by striking “1995” and inserting “2000”.

Amend the title so as to read:

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

BRIEF EXPLANATION

The Farm Credit System (FCS or System) is a government-sponsored enterprise established by Congress to provide credit to agriculture. When the System was created its intent was to fill a credit need that was not being adequately served by existing institutions. By creating this entity Congress hoped to provide a sustainable supply of credit for agriculture. In 1987 the System was facing severe financial stress. In the previous two years they had lost over \$4.6 billion and many of their borrowers were in technical insolvency due to a variety of factors, including diminishing land values. The capital level of the System was being depleted quickly and there was need for legislation to assist the System to maintain solvency. In response, Congress passed the Agricultural Credit Act of 1987 (1987 Act). The 1987 Act established the Farm Credit System Insurance Corporation (FCSIC) to assess premiums from Farm Credit Banks and it also raised the required capital level of System institutions. However, the '87 Act also placed certain paperwork requirements on the System that are no longer necessary.

The Farm Credit System Regulatory Relief Act of 1995 (H.R. 2029) is intended to provide regulatory relief to the System. This legislation is also intended to provide for an orderly decrease of premiums being assessed against farm credit banks and for the disbursement of money above the secure base amount of the insurance fund that has accrued from excess interest.

The Farm Credit Administration (FCA) estimates that H.R. 2029 will save between \$18 to \$20 million over five years. This savings derives from the elimination of the requirement to establish a separate board of directors for FCSIC. This additional board of directors would cost \$2 million a year. Currently, the FCA board serves as the FCSIC board with an FCA board member acting as chairman. This arrangement saves money and provides for the safety and soundness of the System. Savings in this legislation also derive from extending the examination schedule from 12 months to every 18 months. This change is estimated to also save \$2 million a year. According to the FCA, "were H.R. 2029 enacted with the extended examination schedule and the repeal of an independent FCSIC Board, a cost savings of \$18 to \$20 million could be realized over the next 5 years."

This legislation recognizes that the FCA is an effective arms-length regulator that has not placed an undue regulatory burden on the System. The intent of H.R. 2029 is to repeal unnecessary regulations that the FCA has not yet repealed because they have a basis in statute.

PURPOSE AND NEED

The Farm Credit Regulatory Relief Act of 1995 is designed to eliminate unnecessary regulatory burden on the System, provide for an orderly decrease of premiums on the System after reaching their secure base amount, and provide for the rebate of interest accruing on the secure base amount, which they are estimated to reach in the first quarter of 1997. The effect of rebating excess amounts accruing on the secure base will be lower interest rates for farmer and rancher borrowers in the System. System borrowers

will also benefit by repealing regulations that do not protect the safety and soundness of System institutions. The FCA, and the taxpayers it protects, will also benefit from this legislation through additional flexibility provided to the regulator of the System. The FCA will be able to react to any problems that could arise within the System using improved authority to review management of troubled institutions and to regulate golden parachute payments to management of troubled institutions.

SECTION-BY-SECTION ANALYSIS

Section 1

Short title and table of contents, "The Farm Credit System Regulatory Relief Act of 1995."

Section 2

All references are to the Farm Credit Act of 1971 unless otherwise noted.

Section 3

Section 3 contains Congressional findings and a requirement for Farm Credit Administration to continue its review to reduce regulatory burdens.

Section 4

Section 4 amends 5.19(a) by changing the mandatory examination of System institutions, except Federal Land Bank Associations, from every year to every 18 months unless the FCA determines more frequent examinations are necessary.

Section 5

Subsection (a) amends 5.55(a), including conforming changes. By giving the FCSIC the authority to reduce premiums by a percentage, determined solely by FCSIC, uniformly applied to all insured System banks.

Subsection (b) makes a technical change to 5.55(d) necessitated by the changes made by subsection (a).

Subsection (c) amends 5.55 by adding a new subsection (e), which creates an Allocated Insurance Reserves Account (Account) for each insured System bank and for holders of Financial Assistance Corporation (FAC) stock:

New paragraph (e)(1) establishes the Accounts, and provides that amounts in any Account shall be considered to be part of the Fund.

New paragraph (e)(2) provides that if, at the end of any calendar year, the aggregate amounts in the Fund exceed the secure base amount, FCSIC shall allocate any excess amount to all Accounts, less any amounts necessary for estimated operating expenses and insurance obligations, as determined by FCSIC.

New paragraph (e)(3) provides the allocation formula for the total excess amount determined under (e)(2) which is 10% to be allocated to the FAC stock Account (until the limit in (5)(C) is reached); and the remainder to be allocated pro rata among the Accounts of each insured System bank on the ratio of each bank's 3-year average principal outstanding of loans in accrual status to all insured Sys-

tem bank's 3-year average principal outstanding of loans in accrual status.

New paragraph (e)(4) provides that, to the extent that actual operating expenses and insurance obligations exceed the estimate in (e)(2), FCSIC shall cover such expenses by first reducing proportionally amounts in the Accounts.

New paragraph (e)(5), in subparagraph (A), provides that, beginning with calendar year 2003, if the aggregate amounts in the Fund exceed the secure base amount, FCSIC may pay: (i) to each insured System bank the lesser of: 20 percent of the bank's account on the date of payment; and (ii) to each System bank and association that is a holder of FAC stock, a proportionate share of the lesser of: 20 percent of the FAC stock Account as of December 31 of the preceding year, or 20 percent of the balance in the FAC stock Account on the date of payment.

New paragraph (e)(5), in subparagraph (B), provides that FCSIC may reduce or eliminate payments under subparagraph (A) if FCSIC determines such a reduction or elimination is necessary to prevent the Fund from falling below the secure base amount. New paragraph (e)(5), in subparagraph (C), provides that after FCSIC determines that the FAC stock Account is sufficient to reach \$56 million, FCSIC shall not allocate any further excess amounts to such Account. This subparagraph also provides that, upon the disbursement of a total of \$53 million from the FAC stock Account, FCSIC shall disburse the remaining \$3 million and close the FAC stock Account.

New paragraph (e)(5), in subparagraph (D), provides that each insured System bank receiving an Account disbursement must develop and implement an equitable plan for distributing such payments among the bank and its associations within 60 days of receiving such disbursement. New paragraph (e)(5), in subparagraph (E), provides an exception to the requirements of subparagraph (D) for Farm Credit districts in which banks have already reimbursed their affiliated associations for previously unreimbursed FAC stock.

Section 6

Subsection (a) amends 5.61(a)(3): to provide different authorities with respect to troubled insured System banks; by requiring FCSIC to implement the least-costly assistance available to a troubled institution (including liquidation); and by deleting the prohibition of liquidating banks operating in areas where FCSIC determines that continued operation is essential to provide adequate agricultural credit in the areas.

New subparagraph (A) provides that assistance cannot be provided to a System bank unless it is the least costly to the Fund of all possible alternatives. Before making the least cost determination the Corporation shall allow other institutions the opportunity to comment and submit information.

New subparagraph (B) sets forth the criteria for determining the least costly alternative. Evaluation of alternative must be based on a present value basis using a reasonable discount rate; evaluations (including any assumptions) must be documented; and such documentation must be retained for at least 5 years.

New subparagraph (C) provides that: (i) the determination of the cost of assistance under this subsection shall be made as of the date on which FCSIC makes the determination to provide assistance; and (ii) the determination of the cost of liquidation shall be made as of the earlier of the date on which a conservator or receiver is appointed or the date under (i).

New subparagraph (D) provides that, before providing assistance, FCSIC shall evaluate the adequacy of the managerial resources of the bank, including approval of the continued services of any director or senior ranking officer.

New subparagraph (E) provides that determination under this paragraph shall be solely by FCSIC.

Subsection (b) makes conforming amendments.

Section 7

Section 7 repeals 201 of the Farm Credit Banks and Association Safety and Soundness Act of 1992, which requires the establishment of a separate board of directors for FCSIC.

Section 8

Subsection (a) amends 5.58(9) by clarifying that, as part of its general corporate powers, FCSIC can act as a conservator as well as a receiver.

Subsection (b) makes a conforming amendment by deleting an unnecessary definition of “receiver” in 5.51(5).

Section 9

Section 9 amends Part E of title V by adding a new section 5.61A, which provides authority to regulate golden parachute and indemnification payments.

New subsection (a) provides that FCSIC has authority to prohibit or limit golden parachutes or indemnifications, including the Federal Agricultural Mortgage Corporation (Farmer Mac). New subsection (b) sets forth the criteria to be taken into account by FCSIC when taking action under subsection (a), which may include: whether an institution related party has committed acts of fraud, breach of trust or fiduciary duty, or insider abuse that has had a detrimental effect on the financial condition of the institution; whether there is a reasonable basis to believe that the institution related party has violated law or regulations; whether the institution related party was in a position of managerial or fiduciary responsibility; and the length of time the party was related with the institution and the reasonableness of the compensation.

New subsection (c) prohibits certain payments (prepaid salaries, and liability or legal expenses) of an institution related party if the payment is made in contemplation of insolvency or such payment has the result of preventing proper application of the institution’s assets or preferring one creditor over another.

New subsection (d), in paragraph (1), defines “golden parachute” to mean any payment (or agreement to make payment) in the nature of compensation that is: (A) contingent on termination; and (B) received after the date that: the institution is insolvent, a conservator or receiver is appointed, FCA has assigned it a CAMEL rating

of 4 or 5, or FCSIC determines that the institution is otherwise in troubled condition.

New subsection (d), in paragraph (2), provides that a payment made before the date of one of the events specified in paragraph (1) may be considered as a golden parachute payment if the payment was made in contemplation of the event.

New subsection (d), in paragraph (3), specifies that a golden parachute payment does not include a payment under a retirement plan, that is qualified under 401 of the Internal Revenue Code, a payment made under a bona fide deferred compensation plan that FCSIC determines to be allowable, or any payment made because of death or disability.

New subsection (e) defines "indemnification payment," "legal or liability expense," "payment," and "institution-related party."

New subsection (f) provides that nothing in this subsection shall prohibit any institution from purchasing commercial insurance (excluding insurance or bonds for civil money penalties or removal from office).

New subsection (g) provides that nothing in this section shall be construed as limiting the powers, functions, or responsibilities of FCA.

Section 10

Section 10 would give Farm Credit System associations the flexibility to form administrative service entities under section 4.25 of the Farm Credit Act, either individually or in combination with one or more other System institutions. It would also enable two or more associations from different Farm Credit districts to jointly form a service entity. In addition, Section 10 would enable associations to become shareholders in a service entity previously formed by one or more System banks. Approval of an association's funding bank would not be required in order for the association to form a service entity under this authority. The Committee is mindful of the fact that section 4.25 of the Farm Credit Act prohibits a service formed under that section from extending credit or providing insurance services to System borrowers. This statutory prohibition would also apply to service entities formed by associations under this new authority.

Section 11

Subsection (a) amends 4.3A by redesignating subsections (f) and (g) as (g) and (h), and by adding a new subsection (f) containing provisions for loans sold into a secondary market: New paragraph (f)(1) provides that, with respect to loans designated for sale into a secondary market under title VIII or otherwise after the date of enactment, no voting stock or participation certificate requirements shall apply, and with respect to loans made before the date of enactment which have been sold into a secondary market, all outstanding voting stock or participation certificates held by borrowers shall be retired.

New paragraph (f)(2) provides, however, that if a loan designated for sale into a secondary market is not sold within 180 days, voting stock and participation certificate requirements shall apply.

Subsection (b) amends 4.14(a)(5) to clarify that the term “loan” does not include a loan that is designated to be sold into a secondary market within 180 days under title VIII or otherwise on or after the date of enactment.

Section 12

Subsection (a) amends the disclosure provisions regarding interest rates in 4.13(a)(4) by adding a provision which specifies that any FCA regulation implementing such provision shall allow for notice to a borrower to be made within a reasonable time after an interest rate change.

Subsection (b) amends 1.5(13) by striking the authority for a Farm Credit Bank to approve the appointment and compensation of the chief executive officer of such bank’s affiliated associations.

Subsection (c) amends 5.17(a)(2)(A) by striking the FCA’s authority to approve joint management agreements.

Subsection (d) amends 1.0(a) by striking paragraph (5), which requires a financial statement from each borrower at least every three years.

Subsection (e) amends 1.10(a)(1) by adding a new paragraph (D), which allows real estate loans on which private mortgage insurance is obtained to exceed 85 percent of the appraised value, to the extent that the insurance covers the loan above 85 percent.

Subsection (f) amends 5.17(a)(8) to clarify that FCA’s regulatory power with respect to the dissemination of quarterly reports to share holders cannot be more onerous than similar requirements for national banks.

Section 13

Section 13 amends the borrower eligibility criteria in 3.8(b)(1)(A) by deleting the requirement that a borrower be certified as eligible by the Administrator of the Rural Electrification Administration while continuing the requirement that a borrower be eligible under the Rural Electrification Act of 1936.

Section 14

Subsection (a) amends the cooperative borrower eligibility provisions in 3.8(a) by adding a provision that specifies that a previous cooperative borrower specified in (a)(4) shall continue to be an eligible borrower as long as at least 50 percent of the voting control is held by farmers, producers, harvesters of aquatic products, or eligible cooperative associations.

Subsection (b) makes a conforming change to 3.8(b)(1)(D).

Section 15

Section 15 extends the interest rate reduction program for guaranteed loans authorized by section 351 of the Consolidated Farm and Rural Development Act by extending 1320 of the Food Security Act of 1985 through December 31, 2000.

COMMITTEE CONSIDERATION

I. HEARINGS

The Subcommittee on Resource Conservation, Research, and Forestry held a hearing on H.R. 2029 on July 27, 1995 and received testimony from the Chairwoman of the Farm Credit Administration, Marsha Martin.

II. SUBCOMMITTEE CONSIDERATION

The Subcommittee on Resource Conservation, Research, and Forestry held a business meeting, pursuant to notice, to consider H.R. 2029, "the Farm Credit Regulatory Relief Act of 1995". The legislation was reported with one amendment offered by Mr. Gunderson to section (e)(5)(A) striking, "shall" and inserting instead, "may". The amendment was agreed to by voice vote and the bill was ordered reported by voice vote.

III. FULL COMMITTEE CONSIDERATION

The full committee met pursuant to notice to consider H.R. 2029. Mr. Allard, chairman of the Subcommittee on Resource Conservation, Research, and Forestry was recognized for comment on the bill.

Mr. Allard requested unanimous consent to offer a substitute bill to be considered as original text. The bill was adopted by voice vote and ordered to be reported to the House with the recommendation that the bill, as adopted, do pass.

ADMINISTRATION POSITION

The Administration had no position on this legislation. The Farm Credit Administration supports the passage of H.R. 2029.

FARM CREDIT ADMINISTRATION,
McLean, VA, August 11, 1995.

Hon. PAT ROBERTS,
Chairman, House Committee on Agriculture, House of Representatives, 1301 Longworth, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for providing the Farm Credit Administration (FCA) with the opportunity to communicate our support for H.R. 2029, a bill to amend the Farm Credit Act of 1971. It was a pleasure for me to testify before Chairman Allard and Members of the Subcommittee on Resource Conservation, Research, and Forestry on his legislation.

You have asked that FCA provide an estimate of the cost of enacting H.R. 2029. After careful review, it has been determined that significant savings could be realized were this bill to be adopted by Congress. Estimated savings of as much as \$4 million annually could be achieved under two provisions of H.R. 2029, the 18-month examination schedule extension and retention of the current three member Farm Credit System Insurance Corporation (FCSIC) Board.

The Agency estimates that adoption of an 18 month examination schedule for many of our institutions, in lieu of the current 12 month examination schedule, could save as much as \$2 million an-

nually. This change would further streamline FCA without compromising the safety and soundness of the institutions it regulates.

If the statutory requirement for establishment of an independent FCSIC Board is repealed, as proposed by H.R. 2029, additional costs can be avoided. The implementation of an independent, full time three member Board of Directors would increase FCSIC administrative costs by approximately \$2.0 million annually. Under H.R. 2029, FCSIC would continue to benefit from access to FCA professional and administrative resources under the same operating procedures that have been in place since 1990.

Were H.R. 2029 enacted with the extended examination schedule and the repeal of an independent FCSIC Board, a cost savings of \$18 to \$20 million could be realized over the next five years.

Should you have additional questions regarding H.R. 2029, please let me know.

Sincerely,

MARSHA MARTIN, *Chairman.*

At the time of the filing of this report, the Committee had not received a report from the U.S. Department of Agriculture concerning H.R. 2029, as amended, to amend the Farm Credit Act of 1971 to provide regulatory relief.

BUDGET ACT COMPLIANCE (SECTION 308 AND SECTION 403)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, or new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974 were not received by the Committee prior to the filing of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 2029, as amended, will have no inflationary impact on the national economy.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform and Oversight under clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 2029, as amended.

No specific oversight activities other than the hearings detailed in this report were conducted by the Committee within the definition of clause 2(b)(1) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation changes existing law by amending the Farm Credit Act of 1971 to eliminate certain regulatory burdens on the Farm Credit System and to address rebates in funds from the Farm Credit System Insurance Corporation. This legislation also amends the Food Security Act of 1985.

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FARM CREDIT ACT OF 1971

* * * * *

TITLE I—FARM CREDIT BANKS

* * * * *

SEC. 1.5. 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) * * *

* * * * *

(13) approve the salary scale of the officers and employees of the associations in its district, [and the appointment and compensation of the chief executive officer thereof,] and supervise the exercise by such associations of the functions vested in or delegated to them;

* * * * *

SEC. 1.10. 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 [paragraphs (2) and (3)] *subparagraphs (C) and (D)*.

* * * * *

(D) *PRIVATE MORTGAGE INSURANCE.—Loans 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.*

* * * * *

[(5) FINANCIAL STATEMENT.—Each Farm Credit Bank shall require a financial statement from each borrower at least once every 3 years, or during such shorter period of time as may be

required under regulations of the Farm Credit Administration.]

* * * * *

SEC. 1.12. RELATED SERVICES.

(a) * * *

(b) AUTHORITY TO PASS ALONG COST OF INSURANCE PREMIUMS.— 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. The assessment of any such association or other financing institution for any calendar year shall be computed on the same basis as is used to compute the premium payment and shall not exceed the sum of—

(1) the annual average principal outstanding for such year on loans made by the association, or on loans made by the other financing institution and funded by or discounted with the Farm Credit Bank, that are in accrual status, excluding the guaranteed portions of government-guaranteed loans (as defined in section 5.55(a)(3)) provided for in paragraph (3), multiplied by 0.0015;

* * * * *

(3)(A) the annual average principal outstanding for such year on the guaranteed portions of Federal government-guaranteed loans (as so defined) made by the association, or by the other financing institution and funded by or discounted with the Farm Credit Bank, that are in accrual status, multiplied by 0.00015; and

(B) the annual average principal outstanding for such year on the guaranteed portions of State government-guaranteed loans (as so defined) made by the association, or by the other financing institution and funded by or discounted with the Farm Credit Bank, that are in accrual status, multiplied by 0.0003.

* * * * *

TITLE III—BANKS FOR COOPERATIVES

PART A—BANKS FOR COOPERATIVES

* * * * *

SEC. 3.8. 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) * * *

* * * * *

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 the preceding sentence, continue to be so 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 a loan or loan commitment from the Rural Telephone Bank, or that [have been certified by the Administrator of the Rural Electrification Administration to be eligible for such] *are eligible under the Rural Electrification Act of 1936 for a loan, loan commitment, or [loan guarantee, and] loan guarantee from such agencies (or their successors), and subsidiaries of such cooperatives or other entities.*

* * * * *

(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.*

* * * * *

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

PART A—FUNDING

* * * * *

SEC. 4.3A. CAPITALIZATION OF SYSTEM INSTITUTIONS.

(a) * * *

* * * * *

(f) LOANS DESIGNATED FOR SALE OR SOLD INTO THE SECONDARY MARKET.—Notwithstanding any other provision of this section:

(1) GENERAL RULE.—Subject to paragraph (2), the bylaws adopted by any bank or association under subsection (b) may provide—

(A) for any loan made on or after the date of the enactment of this subsection that is designated, at the time the loan is made, for sale into a secondary market under title VIII or otherwise, that no voting stock or participation certificate purchase requirement shall apply to the borrower of the loan; and

(B) for any loan made before the date of the enactment of this subsection that is sold into a secondary market under title VIII or otherwise, 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) EXCEPTION.—If a loan designated for sale as described in paragraph (1)(A) is not sold into a secondary market within 180 days after the designation, the voting stock or participation certificate purchase requirement that would otherwise apply to the loan in the absence of bylaw provisions adopted under paragraph (1)(A) shall be effective, except that the bylaws may provide that if such a loan is thereafter sold into a secondary market, all outstanding voting stock or participation certificates held by the borrower with respect to such loan shall, subject to subsection (d)(1), be retired.

[(f)] (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.

[(g)] (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.

* * * * *

PART C—RIGHTS OF BORROWERS; LOAN RESTRUCTURING

SEC. 4.13. 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) * * *

* * * * *

(4) any change in the interest rate applicable to the borrower's loan, except that any regulation of the Farm Credit Administration implementing this paragraph shall include a provision permitting notice to a borrower of a change in the interest rate applicable to the borrower's loan to be made within a reasonable time after the effective date of the change;

* * * * *

SEC. 4.14A. RESTRUCTURING DISTRESSED LOANS.

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

(1) * * *

* * * * *

[(5) LOAN.—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.]

(5) LOAN.—

(A) *IN GENERAL.*—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 OF LOANS DESIGNATED FOR SALE INTO A SECONDARY MARKET.*—The term “loan” does not include a loan made on or after the date of enactment of this subparagraph that, at the time the loan is made, is designated for sale into a secondary market under title VIII or otherwise, except as provided in subparagraph (C).

(C) *SPECIAL RULE.*—If a loan designated for sale into a secondary market is not sold into a secondary market within 180 days after such designation, the provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 that would apply to the loan in the absence of subparagraph (B) shall apply to the loan until the loan is so sold.

* * * * *

PART E—SERVICE ORGANIZATIONS

* * * * *

SEC. 4.28A. DEFINITION OF BANK.

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

TITLE V—FARM CREDIT ADMINISTRATION ORGANIZATION

PART B—FARM CREDIT ADMINISTRATION ORGANIZATION

* * * * *

SEC. 5.17. **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) * * *

(2)(A) 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 [or management agreements] when agreed to by a majority vote of the voting stockholders or contributors to the guaranty fund of each of the institutions involved. In issuing charters and certificates of terri-

tory for district-wide mergers of associations where stockholders of one or more associations did not approve the merger, the charter of the new or merged association shall not include the territory of the disagreeing association or associations; charters issued during calendar year 1985 for district-wide new or merged associations which included the territory of a disagreeing association shall be revoked and reissued to exclude such territory, unless subsequently agreed to by the board of directors of such association or associations. The Farm Credit Administration Board shall ensure that disapproving associations (A) shall not be charged any assessment under this Act at a rate higher than that charged other like associations in the district, and (B) shall be provided with financial services and assistance on the same basis as other like associations in the district (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the association and its member-borrowers. 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.

* * * * *

(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) * * *

* * * * *

SEC. 5.19. EXAMINATIONS.—(a) Except for Federal land bank associations, 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 [each year] *every 18 months*. Each Federal land bank association shall be examined by Farm Credit Administration examiners at such times as the Farm Credit Administration Board may determine, except that each such association shall be examined at least once every three years. Such examinations may include, if appropriate, but are not limited to, an analysis of credit and collateral quality and capitalization of the institution, and appraisals of the effectiveness of the institution's management and application of policies governing the carrying out of this 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 organiza-

tion, 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.

* * * * *

PART E—FARM CREDIT SYSTEM INSURANCE CORPORATION

SEC. 5.51. DEFINITIONS.

As used in this part:

(1) * * *

* * * * *

[(5) RECEIVER.—The term “receiver” means a receiver or conservator appointed by the Farm Credit Administration for a System institution.]

[(6)] (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. 5.55. PREMIUMS.

(a) AMOUNT IN FUND NOT EXCEEDING SECURE BASE AMOUNT.—

(1) IN GENERAL.—[Until the aggregate of amounts in the Farm Credit Insurance Fund exceeds the secure base amount, the annual premium due from any insured System bank for any calendar year shall] *If, at the end of any calendar year, the aggregate of the amounts in the Farm Credit Insurance Fund does not exceed the secure base amount, the annual premium due from any insured System bank for that calendar year shall, subject to paragraph (2), be equal to the sum of—*

(A) * * *

* * * * *

(2) REDUCED PREMIUMS.—*The Corporation, in its sole discretion, 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)] (3) DEFINITION OF GOVERNMENT-GUARANTEED LOANS.—As used in this section and section 1.12(b), the term “government-guaranteed loans” means loans or credits, or portions of loans or credits, that are 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 annual premium due from each insured System bank [for the following calendar year], as determined under subsection (a)(1), by a percentage determined by the Corporation so that the aggregate of the premiums payable by all System banks is sufficient to ensure that the aggregate of amounts in the *Farm Credit Insurance Fund* after such premiums are paid is not less than the secure base amount at such time.

* * * * *

(d) DETERMINATION OF PRINCIPAL OUTSTANDING.—For the purpose of subsections (a) [and (c)], (c), and (e), the principal outstanding on all loans made by [a Farm Credit Bank] *an insured System bank* shall be determined based on all loans made—

(1) 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 because such association is receiving, or has received, funds provided through the [Farm Credit Bank] *insured System bank*;

(2) by any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) that is able to make such loans because such entity is receiving, or has received, funds provided through the [Farm Credit Bank] *insured System bank*; and

(3) by such [Farm Credit Bank] *insured System bank* (other than loans made to any party described in paragraph (1) or (2)).

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

(1) ESTABLISHMENT OF ALLOCATED INSURANCE RESERVES ACCOUNTS.—There is hereby established within the *Farm Credit Insurance Fund*—

(A) for each insured System bank; and

(B) subject to paragraph (5)(C), for all holders, in the aggregate, of *Financial Assistance Corporation* stock, an *Allocated Insurance Reserves Account*. Amounts in any *Allocated Insurance Reserves Account* shall be considered to be part of the *Farm Credit Insurance Fund*.

(2) 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* such 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.

(3) *ALLOCATION FORMULA.*—From the total amount required to be allocated at the end of a calendar year pursuant to paragraph (2)—

(A) 10 percent of such total amount shall be credited to the Allocated Insurance Reserves Account established under paragraph (1)(B), subject to paragraph (5)(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 such total amount (less any reduction under subparagraph (A)) as the average principal outstanding for the 3-year period ending with the end of such calendar year on loans made by the bank that are in accrual status bears to the average principal outstanding for such 3-year period 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)).

(4) *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 estimated sum described in paragraph (2) for the calendar year, the Corporation shall cover such expenses and obligations by reducing each Allocated Insurance Reserves Account by the same proportion and expending the amounts so obtained, before expending other monies in the Fund.

(5) *OTHER DISPOSITION OF ACCOUNT FUNDS.*—

(A) *IN GENERAL.*—Beginning in calendar year 2003, if the aggregate of the amounts in the Farm Credit Insurance Fund exceeds the secure base amount, 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 lesser of—

(I) 20 percent of the balance in the 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 payment; and

(ii) subject to subparagraphs (C) and (E), pay to each System bank and association holding Financial Assistance Corporation stock its proportionate share, determined by dividing the number of shares of Financial Assistance Corporation stock held by such 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 under subparagraph (A) if the Corporation determines, in its sole discretion, that such 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 that calendar year to be less than the secure base amount.

(C) *REIMBURSEMENT FOR FINANCIAL ASSISTANCE CORPORATION STOCK.*—

(i) *SUFFICIENT FUNDING.*—Notwithstanding paragraph (3)(A), upon provision by the Corporation for the accumulation in the account established under paragraph (1)(B) of funds in an amount equal to \$56 million, the Corporation shall not allocate any further funds to such account except to replenish such account in the event that funds are diminished below such amount by the Corporation pursuant to paragraph (4).

(ii) *WIND DOWN AND TERMINATION.*—

(I) *FINAL DISBURSEMENTS.*—Upon disbursement of a total of \$53 million from such Allocated Insurance Reserves Account, the Corporation shall disburse the remaining amounts in such account, as determined under paragraph (5)(A)(ii), without regard to the percentage limitation in subclauses (I) and (II) thereof.

(II) *TERMINATION OF ACCOUNT.*—Upon disbursement of a total of \$56 million from such Allocated Insurance Reserves Account established under paragraph (1)(B), the Corporation shall close the Allocated Insurance Reserves Account established under paragraph (1)(B) and transfer any remaining funds in such Account to the remaining Allocated Insurance Reserves Accounts in accordance with the formula in paragraph (3)(B) for the calendar year in which the transfer occurs.

(D) *DISTRIBUTION OF PAYMENTS RECEIVED.*—Within 60 days after receipt of a payment made under subparagraph (5)(A)(i), each insured System bank, in consultation with its affiliated associations, and taking into account the direct or indirect payment of insurance premiums by such associations, shall develop and implement an equitable plan to distribute payments received pursuant to subparagraph (5)(A)(i) among the bank and its associations.

(E) *EXCEPTION FOR PREVIOUSLY REIMBURSED ASSOCIATIONS.*—For purposes of subparagraph (5)(A)(ii), in any Farm Credit District in which the funding bank has reimbursed one or more of its affiliated associations for the previously unreimbursed portion of the Financial Assistance stock held by such associations, the funding bank shall be deemed to be the holder of the shares of Financial Assistance Corporation stock for which it has provided such reimbursement.

SEC. 5.56. CERTIFICATION OF PREMIUMS.

(a) FILING CERTIFIED STATEMENT.—Annually, on a date to be determined in the sole discretion of the Board of Directors, each insured System bank that became insured before the beginning of the year shall file with the Corporation a certified statement showing—

(1) * * *

(2) the annual average principal outstanding on the guaranteed portion of Federal Government-guaranteed loans (as defined in section **[5.55(a)(2)]** *5.55(a)(3)*) that are in accrual status;

(3) the annual average principal outstanding on State government-guaranteed loans (as defined in section **[5.55(a)(2)]** *5.55(a)(3)*) that are in accrual status;

* * * * *

SEC. 5.58. 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) * * *

* * * * *

[(9) RECEIVER.—The Corporation may act as receiver.]

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

* * * * *

SEC. 5.61. POWERS OF CORPORATION WITH RESPECT TO TROUBLED INSURED SYSTEM BANKS.

(a) AUTHORITY TO PROVIDE ASSISTANCE.—

(1) **[IN GENERAL] 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) * * *

(2) **[ENUMERATED POWERS] FACILITATION OF MERGERS OR CONSOLIDATION.—**

(A) **[FACILITATION OF MERGERS OR CONSOLIDATION] 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) * * *

* * * * *

(3) LIMITATION.—

[(A) COST OF LIQUIDATION.—Assistance shall not be provided to an insured System bank under this subsection if

the amount of such assistance exceeds an amount determined by the Corporation to be the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank). This subparagraph shall not apply to the provision of assistance to a bank if the Corporation determines that the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.】

(A) *LEAST-COST RESOLUTION.*—Assistance may not be provided to an insured System bank under this subsection unless the total amount of such assistance is the least costly to 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 appropriate the opportunity to submit information relating to such determination.

(B) *PROCEDURAL RULES.*—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 that 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) *COST OF ASSISTANCE.*—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 such assistance to the institution under this section.

(ii) *COST OF LIQUIDATION.*—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 bank;
- (II) the date on which a receiver is appointed for the bank; or
- (III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to the bank.

(D) *EVALUATION OF MANAGEMENT.*—Before providing any assistance under paragraph (1), the Corporation shall evaluate the adequacy of the managerial resources of the bank. The continued service of any director or senior ranking officer who serves in a policymaking role for the assisted bank, as determined by the Corporation, shall be

subject to approval by the Corporation as a condition of such assistance.

(E) *DISCRETIONARY DETERMINATION.*—Any determination that the Corporation makes under this paragraph shall be in the sole discretion of the Corporation.

[(B)] (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.

* * * * *

SEC. 5.61A. AUTHORITY TO REGULATE GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS.

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

(b) *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 (a), which may include the following:

(1) Whether there is a reasonable basis to believe that the 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.

(6) The length of time that the party was related with 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 involved represents a reasonable payment for services rendered.
- (c) *CERTAIN PAYMENTS PROHIBITED.*—No Farm Credit System institution may prepay the salary or any liability or legal expense of any institution-related party if such payment—
- (1) is made in contemplation of the insolvency of such institution or after the commission of an act of insolvency; and
 - (2) is made with a view to, or has the result of—
 - (A) preventing the proper application of the assets of the institution to creditors; or
 - (B) preferring one creditor over another.
- (d) *GOLDEN PARACHUTE PAYMENT DEFINED.*—As used in this section:
- (1) *IN GENERAL.*—The term “golden parachute payment” means any payment (or any agreement to make any payment) in the nature of compensation by any Farm Credit System institution for the benefit of any institution-related party under an obligation of the institution that—
 - (A) is contingent on the termination of the party’s relationship with the institution; and
 - (B) is received on or after the date on which—
 - (i) the institution is insolvent;
 - (ii) any conservator or receiver is appointed for the institution;
 - (iii) the Farm Credit Administration has assigned the institution 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).
 - (2) *CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.*—Any payment that would be a golden parachute payment but for the fact that the payment was made before the date referred to in paragraph (1)(B) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any clause of such paragraph.
 - (3) *CERTAIN PAYMENTS NOT INCLUDED.*—The term “golden parachute payment” shall not include—
 - (A) any 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;
 - (B) any payment made under a bona fide deferred compensation plan or arrangement that the Corporation determines, by regulation or order, to be permissible; or
 - (C) any payment made by reason of the death or disability of an institution-related party.
- (e) *OTHER DEFINITIONS.*—As used in this section:
- (1) *INDEMNIFICATION PAYMENT.*—The term “indemnification payment” means any payment (or any agreement to make any 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.

(2) *LIABILITY OR LEGAL EXPENSE.*—The term “liability or legal expense” means—

(A) any 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.

(3) *PAYMENT.*—The term “payment” means—

(A) any 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 such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

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

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

(4) *INSTITUTION-RELATED PARTY.*—The term “institution-related party” means—

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

(B) any 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;

(C) any independent contractor (including any attorney, appraiser, or accountant) who 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; or

(D) any receiver or conservator of a Farm Credit System institution.

(f) *SPECIAL RULE.*—No provision of this section may be construed as prohibiting any Farm Credit System institution from purchasing any commercial insurance policy or fidelity bond, except that such insurance policy or bond shall not cover any legal or liability expense of the institution that is described in subsection (e)(1).

(g) *SPECIAL RULE REGARDING THE FARM CREDIT ADMINISTRATION.*—No provision of this section may be construed as limiting the

powers, functions, or responsibilities of the Farm Credit Administration.

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**TITLE VIII—AGRICULTURAL MORTGAGE
SECONDARY MARKET**

**Subtitle A—Establishment and Activities of
Federal Agricultural Mortgage Corporation**

* * * * *

SEC. 8.9. EXEMPTION FROM RESTRUCTURING AND BORROWERS RIGHTS PROVISIONS FOR POOLED LOANS.

(a) * * *

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

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SECTION 201 OF THE FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS ACT OF 1992

[SEC. 201. FARM CREDIT SYSTEM INSURANCE CORPORATION.

[(a) IN GENERAL.—Section 5.53 (12 U.S.C. 2277a-2) is amended to read as follows:

[“SEC. 5.53. BOARD OF DIRECTORS.

[(a) IN GENERAL.—

[(1) ESTABLISHMENT.—The management of the Corporation shall be vested in a Board of Directors (referred to in this section as the ‘Board’). The Board shall establish policies for the Corporation. The Board shall provide for the performance of all the powers and duties vested in the Corporation.

[(2) APPOINTMENT.—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.

【“(3) CHAIRPERSON.—Of the persons appointed to the Board, one shall be designated by the President to serve as Chairperson of the Board for the duration of the term of the member.

【“(4) POSTEMPLOYMENT PROHIBITION.—A member of the Board shall be ineligible during the time the member is in office and for 2 years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

【“(b) TERM OF OFFICE.—

【“(1) IN GENERAL.—The term of office of each member of the Board shall be 6 years, except that the terms of the two members, other than the Chairperson, first appointed under subsection (a) shall expire, one on the expiration of 2 years after the date of appointment, and one on the expiration of 4 years after the date of appointment.

【“(2) SUCCESSION.—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 6 years may be reappointed for a full 6-year term and members appointed to fill unexpired terms of 3 years or less may be reappointed for a full 6-year term.

【“(3) VACANCIES.—Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as a member after the expiration of the term of the member until a successor has been appointed and qualified.

【“(c) ORGANIZATION.—

【“(1) OATH.—Each member of the Board, within 15 days after notice of appointment, shall subscribe to the oath of office.

【“(2) QUORUM.—The Board may transact business if a vacancy exists, if a quorum is present. A quorum shall consist of two members of the Board.

【“(3) MEETING.—The Board shall hold meetings at such times and places as the Board may fix and determine. The meetings shall be held on the call of the Chairperson or any two Board members.

【“(4) RULES; RECORDS.—The Board shall adopt such rules as the Board considers appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

【“(d) COMPENSATION.—

【“(1) IN GENERAL.—The members of the Board shall devote their full time and attention to the business of the Board.

【“(2) CHAIRPERSON.—The Chairperson of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

【“(3) OTHER MEMBERS.—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, United States Code.

【“(4) EXPENSES.—Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in

the discharge of the official duties of the member without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States.”

[(b) CONFORMING AMENDMENTS.—

[(1) CHAIRPERSON.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:
[“Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.”]

[(2) MEMBERS.—Section 5315 of such title is amended by adding at the end the following new item:
[“Members, Board of Directors of the Farm Credit System Insurance Corporation.”]

[(c) EFFECTIVE DATE.—

[(1) IN GENERAL.—The amendments made by this section shall become effective on January 1, 1996.

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

SECTION 1320 OF THE FOOD SECURITY ACT OF 1985

INTEREST RATE REDUCTION PROGRAM

SEC. 1320. Effective only for the period beginning on the date of enactment of this Act and ending September 30, [1995] 2000, the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended by adding after the section added by section 1319 the following:

“SEC. 351. (a) * * *

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