

insured System bank. The continued service of any director or senior ranking officer who serves in a policymaking role for the assisted insured System bank, as determined by the Corporation, shall be subject to approval by the Corporation as a condition of assistance.

(E) Discretionary determinations

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

(F) Purchase of stock

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

(4) Subordination

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

(5) Reports

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

(b) Authority to pledge or sell assets

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

(c) Subrogation

(1) In general

On the payment to an owner of an insured obligation issued on behalf of an insured System bank in receivership, the Corporation shall be subrogated to all rights of the owner against the bank to the extent of the payment.

(2) Receipt of dividends

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

(d) Right to assets

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

(1) is in writing;

(2) is executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank;

(3) has been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of the board or committee; and

(4) has been, continuously, from the time of its execution, an official record of the bank.

(e) Insured System bank

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

(f) Effective date

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

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

AMENDMENTS

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

§ 2277a-10a. Oversight actions by Corporation

(a) “Institution” defined

In this section, the term “institution” means—

(1) an insured System bank; and

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

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

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

(c) Consultation regarding applications for mergers and restructurings

(1) Corporation to receive copy of transaction applications

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

(2) Consultation required

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

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

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

(a) Definitions

In this section:

(1) Golden parachute payment

The term “golden parachute payment”—

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

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

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

(I) the institution is insolvent;

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

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

(IV) the Corporation otherwise determines that the institution is in a trou-

bled condition (as defined in regulations issued by the Corporation); and

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

(C) does not include—

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

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

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

(2) Indemnification payment

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

(A) is assessed a civil money penalty; or

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

(3) Institution-related party

The term “institution-related party” means—

(A) a director, officer, employee, or agent for a Farm Credit System institution or any conservator or receiver of such an institution;

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

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

(4) Liability or legal expense

The term “liability or legal expense” means—

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

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