

FARMER MAC REFORM ACT OF 1995

JANUARY 4, 1996.—Ordered to be printed

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

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 2130]

[Including CBO cost estimate]

The Committee on Agriculture, to whom was referred the bill (H.R. 2130) to amend the Farm Credit Act of 1971 to improve the efficiency and operation of the Federal Agricultural Mortgage Corporation in order better to ensure that farmers, ranchers and rural home owners will have access to a stable and competitive supply of mortgage credit now and in the future, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Farmer Mac Reform Act of 1995".

**SEC. 2. REFERENCES TO THE FARM CREDIT ACT OF 1971.**

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 (12 U.S.C. 2001 et seq.).

**SEC. 3. DEFINITION OF REAL ESTATE.**

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

**SEC. 4. DEFINITION OF CERTIFIED FACILITY.**

Section 8.0(3) (12 U.S.C. 2279aa(3)) is amended—

- (1) in subparagraph (A), by striking “a secondary marketing agricultural loan” and inserting “an agricultural mortgage marketing”; and
- (2) in subparagraph (B), by striking “, but only” and all that follows through “(9)(B)”.

**SEC. 5. DUTIES OF FEDERAL AGRICULTURAL MORTGAGE CORPORATION.**

Section 8.1(b) (12 U.S.C. 2279aa-1(b)) is amended—

- (1) in paragraph (2), by striking “and” at the end;
- (2) in paragraph (3), by striking the period at the end and inserting “; and”;
- and
- (3) by adding at the end the following:
  - “(4) purchase qualified loans and issue securities representing interests in, or obligations backed by, the qualified loans, guaranteed for the timely repayment of principal and interest.”.

**SEC. 6. POWERS OF THE CORPORATION.**

Section 8.3(c) (12 U.S.C. 2279aa-3(c)) is amended—

- (1) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and
- (2) by inserting after paragraph (12) the following:
  - “(13) To purchase, hold, sell, or assign a qualified loan, to issue a guaranteed security, representing an interest in, or an obligation backed by, the qualified loan, and to perform all the functions and responsibilities of an agricultural mortgage marketing facility operating as a certified facility under this title.”.

**SEC. 7. FEDERAL RESERVE BANKS AS DEPOSITORIES AND FISCAL AGENTS.**

Section 8.3 (12 U.S.C. 2279aa-3) is amended—

- (1) in subsection (d), by striking “may act as depositories for, or” and inserting “shall act as depositories for, and”;
- and
- (2) in subsection (e), by striking “Secretary of the Treasury may authorize the Corporation to use” and inserting “Corporation shall have access to”.

**SEC. 8. CERTIFICATION OF AGRICULTURAL MORTGAGE MARKETING FACILITIES.**

Section 8.5 (12 U.S.C. 2279aa-5) is amended—

- (1) in subsection (a)—
  - (A) in paragraph (1), by inserting “(other than the Corporation)” after “agricultural mortgage marketing facilities”; and
  - (B) in paragraph (2), by inserting “(other than the Corporation)” after “agricultural mortgage marketing facility”; and
- (2) in subsection (e)(1), by striking “(other than the Corporation)”.

**SEC. 9. GUARANTEE OF QUALIFIED LOANS.**

Section 8.6 (12 U.S.C. 2279aa-6) is amended—

- (1) in subsection (a)(1)—
  - (A) by striking “Corporation shall guarantee” and inserting the following:
    - “Corporation—
    - “(A) shall guarantee”;
    - (B) by striking the period at the end and inserting “; and”;
    - (C) by adding at the end the following:
      - “(B) may issue a security, guaranteed as to the timely payment of principal and interest, that represents an interest solely in, or an obligation fully backed by, a pool consisting of qualified loans that—
      - “(i) meet the standards established under section 8.8; and
      - “(ii) have been purchased and held by the Corporation.”;
- (2) in subsection (d)—
  - (A) by striking paragraph (4); and
  - (B) by redesignating paragraphs (5), (6), and (7) as paragraphs (4), (5), and (6), respectively; and
- (3) in subsection (g)(2), by striking “section 8.0(9)(B)” and inserting “section 8.0(9)”.

**SEC. 10. MANDATORY RESERVES AND SUBORDINATED PARTICIPATION INTERESTS ELIMINATED.**

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

(b) **RESERVES AND SUBORDINATED PARTICIPATION INTERESTS.**—Section 8.7 (12 U.S.C. 2279aa-7) is repealed.

(c) **CONFORMING AMENDMENTS.**—

- (1) Section 8.0(9)(B)(i) (12 U.S.C. 2279(9)(B)(i)) is amended by striking “8.7, 8.8,” and inserting “8.8”.

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

**SEC. 11. STANDARDS REQUIRING DIVERSIFIED POOLS.**

(a) IN GENERAL.—Section 8.6 (12 U.S.C. 2279aa-6), as amended by section 10 of this Act, is amended—

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

(b) CONFORMING AMENDMENTS.—

- (1) Section 8.0(9)(B)(i) (12 U.S.C. 2279(9)(B)(i)) is amended by striking “(f)” and inserting “(d)”.
- (2) Section 8.13(a) (12 U.S.C. 2279aa-13(a)) is amended by striking “sections 8.6(b) and” each place such term appears and inserting “section”.
- (3) Section 8.32(b)(1)(C) (12 U.S.C. 2279bb-1(b)(1)(C)) is amended—
  - (A) by striking “shall” and inserting “may”; and
  - (B) by inserting “(as in effect before the date of the enactment of the Farmer Mac Reform Act of 1995)” before the semicolon.
- (4) Section 8.6(b) (12 U.S.C. 2279aa-6(b)), as so redesignated by subsection (a)(2) of this section, is amended—
  - (A) by striking paragraph (4) (as so redesignated by section 9(2)(B) of this Act); and
  - (B) by redesignating paragraphs (5) and (6) (as so redesignated) as paragraphs (4) and (5), respectively.

**SEC. 12. SMALL FARMS.**

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

**SEC. 13. DEFINITION OF AN AFFILIATE.**

Section 8.11(e) (21 U.S.C. 2279aa-11(e)) is amended—

- (1) by striking “a certified facility or”; and
- (2) by striking “paragraphs (3) and (7), respectively, of section 8.0” and inserting “section 8.0(7)”.

**SEC. 14. STATE USURY LAWS SUPERSEDED.**

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

“(d) STATE USURY LAWS SUPERSEDED.—A provision of the Constitution or law of any State shall not apply to an agricultural loan made by an originator or a certified facility in accordance with this title for sale to the Corporation or to a certified facility for inclusion in a pool for which the Corporation has provided, or has committed to provide, a guarantee, if the loan, not later than 180 days after the date the loan was made, is sold to the Corporation or included in a pool for which the Corporation has provided a guarantee, if the provision—

- “(1) limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by an agricultural lender or a certified facility; or
- “(2) limits or prohibits a prepayment penalty (either fixed or declining), yield maintenance, or make-whole payment that may be charged, taken, or received by an agricultural lender or a certified facility in connection with the full or partial payment of the principal amount due on a loan by a borrower in advance of the scheduled date for the payment under the terms of the loan, otherwise known as a prepayment of the loan principal.”.

**SEC. 15. EXTENSION OF CAPITAL TRANSITION PERIOD.**

Section 8.32 (12 U.S.C. 2279bb-1) is amended—

- (1) in the first sentence of subsection (a), by striking “Not later than the expiration of the 2-year period beginning on December 13, 1991,” and inserting “Not sooner than the expiration of the 3-year period beginning on the date of the enactment of the Farmer Mac Reform Act of 1995,”;
- (2) in the first sentence of subsection (b)(2), by striking “5-year” and inserting “8-year”; and
- (3) in subsection (d)—
  - (A) in the first sentence—
    - (i) by striking “The regulations establishing” and inserting the following:
 

“(1) IN GENERAL.—The regulations establishing”; and
    - (ii) by striking “shall contain” and inserting the following: “shall—

“(A) be issued by the Director for public comment in the form of a notice of proposed rulemaking, to be first published after the expiration of the period referred to in subsection (a); and

“(B) contain”; and

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

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

**SEC. 16. MINIMUM CAPITAL LEVEL.**

Section 8.33 (12 U.S.C. 2279bb-2) is amended to read as follows:

**“SEC. 8.33. MINIMUM CAPITAL LEVEL.**

“(a) IN GENERAL.—Except as provided in subsection (b), for purposes of this subtitle, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of—

“(1) 2.75 percent of the aggregate on-balance sheet assets of the Corporation, as determined in accordance with generally accepted accounting principles; and

“(2) 0.75 percent of the Corporation’s aggregate off-balance sheet obligations, which, for the purposes of this subtitle, shall include—

“(A) the unpaid principal balance of outstanding securities that are guaranteed by the Corporation and backed by pools of qualified loans;

“(B) instruments that are issued or guaranteed by the Corporation and are substantially equivalent to instruments described in subparagraph (A); and

“(C) other off-balance sheet obligations of the Corporation.

“(b) TRANSITION PERIOD.—

“(1) IN GENERAL.—For purposes of this subtitle, the minimum capital level for the Corporation—

“(A) prior to January 1, 1997, shall be the amount of core capital equal to the sum of—

“(i) 0.45 percent of aggregate off-balance sheet obligations;

“(ii) 0.45 percent of designated on-balance sheet assets as determined under paragraph (2); and

“(iii) 2.50 percent of on-balance sheet assets other than designated assets;

“(B) during the 1-year period ending December 31, 1997, shall be the amount of core capital equal to the sum of—

“(i) 0.55 percent of aggregate off-balance sheet obligations;

“(ii) 1.20 percent of designated on-balance sheet assets as determined under paragraph (2); and

“(iii) 2.55 percent of on-balance sheet assets other than designated assets;

“(C) during the 1-year period ending December 31, 1998, shall be the amount of core capital equal to—

“(i) the sum of—

“(I) 0.65 percent of aggregate off-balance sheet obligations;

“(II) 1.95 percent of designated on-balance sheet assets as determined under paragraph (2); and

“(III) 2.65 percent of on-balance sheet assets other than designated assets; or

“(ii) if the Corporation’s core capital is less than \$25,000,000 on January 1, 1998, the amount determined under subsection (a); and

“(D) on and after January 1, 1999, shall be the amount determined under subsection (a).

“(2) DEFINITION OF DESIGNATED ON-BALANCE SHEET ASSETS.—In this subsection, the term ‘designated on-balance sheet assets’ means the sum of—

“(A) the aggregate on-balance sheet assets of the Corporation acquired under section 8.6(e); and

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

**SEC. 17. CRITICAL CAPITAL LEVEL.**

Section 8.34 (12 U.S.C. 2279bb-3) is amended to read as follows:

**“SEC. 8.34. CRITICAL CAPITAL LEVEL.**

“For purposes of this subtitle, the critical capital level for the Corporation shall be an amount of core capital equal to 50 percent of the total minimum capital amount determined under section 8.33.”.

**SEC. 18. ENFORCEMENT LEVELS.**

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

**SEC. 19. RECAPITALIZATION OF THE CORPORATION.**

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

**“SEC. 8.38. RECAPITALIZATION OF THE CORPORATION.**

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

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

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

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

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

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

**SEC. 20. 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.—

“(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of this section, the bylaws adopted by a bank or association under subsection (b) may provide—

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

“(B) in the case of a loan made before the date of enactment of this paragraph that is sold into a secondary market, that all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.

“(2) APPLICABILITY.—Notwithstanding any other provision of this section, in the case of a loan sold to a secondary market under title VIII, paragraph (1) shall apply regardless of whether the bank or association retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

“(3) EXCEPTION.—

“(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of this section, if a loan designated for sale under paragraph (1)(A) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the voting stock or participation certificate purchase requirement that would otherwise apply to the loan in the absence of a bylaw provision described in paragraph (1)(A) shall be effective.

“(B) RETIREMENT.—The bylaws adopted by a bank or association under subsection (b) may provide that if a loan described in subparagraph (A) is sold into a secondary market after the end of the 180-day period described in the subparagraph, all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.”.

**SEC. 21. LIQUIDATION OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.**

Title VIII (12 U.S.C. 2279aa et seq.), as amended by section 19 of this Act, is amended by adding at the end the following:

**“Subtitle C—Receivership; Conservatorship; Liquidation of the Federal Agricultural Mortgage Corporation**

**“SEC. 8.41. CONSERVATORSHIP; LIQUIDATION; RECEIVERSHIP.**

“(a) VOLUNTARY LIQUIDATION.—The Corporation may voluntarily liquidate only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board.

“(b) INVOLUNTARY LIQUIDATION.—The Farm Credit Administration Board may appoint a conservator or receiver for the Corporation under the circumstances specified in section 4.12(b). The grounds for appointment of a conservator for the Corporation shall be in addition to those enumerated in section 8.37. In applying section 4.12(b) to the Corporation—

“(1) the Corporation shall also be considered insolvent if the Corporation is unable to pay its debts as they fall due in the ordinary course of business;

“(2) a conservator may also be appointed for the Corporation if the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; and

“(3) a receiver may also be appointed for the Corporation if—

“(A)(i) the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

“(ii) the Corporation is classified under section 8.35 as within level III or IV, and the alternative actions available under subtitle B are not satisfactory; and

“(B) the Farm Credit Administration determines that the appointment of a conservator would not be appropriate.

“(c) APPOINTMENT OF CONSERVATOR OR RECEIVER.—

“(1) QUALIFICATIONS.—Notwithstanding section 4.12(b), if a conservator or receiver is appointed for the Corporation, the conservator or receiver shall be—

“(A) the Farm Credit Administration or any other governmental entity or employee, including the Farm Credit System Insurance Corporation; or

“(B) any person that—

“(i) has no claim against, or financial interest in, the Corporation or other basis for a conflict of interest as the conservator or receiver; and

“(ii) has the financial and management expertise necessary to direct the operations and affairs of and, if necessary, to liquidate the Corporation.

“(2) COMPENSATION.—A conservator or receiver for the Corporation and professional personnel (other than Federal employees) employed to represent or assist the conservator or receiver may be compensated for activities conducted as, or for, a conservator or receiver. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Farm Credit Administration may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Farm Credit Administration determines that compensation at higher rates is necessary in order to recruit and retain competent personnel. The conservator or receiver may contract with any governmental entity, including the Farm Credit System Insurance Corporation, to make personnel, services, and facilities of the entity available to the conservator or receiver upon such terms and compensation arrangements as shall be mutually agreed, and each entity is hereby authorized to provide the same to the conservator or receiver.

“(3) EXPENSES.—The conservator or receiver shall pay valid claims for expenses of the conservatorship or receivership (including compensation pursuant to paragraph (2)) and valid claims with respect to any loan made under subsection (f) before paying any other valid claim against the Corporation, and such claims may be secured by a lien on such property of the Corporation as the conservator or receiver may determine, which lien shall have priority over any other lien.

“(4) LIABILITY.—If the conservator or receiver for the Corporation is not a Federal entity, or an officer or employee of the Federal Government, the con-

servator or receiver shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the conservatorship or receivership, unless such acts or omissions constitute gross negligence or any form of intentional tortious conduct or criminal conduct.

“(5) INDEMNIFICATION.—The Farm Credit Administration may indemnify the conservator or receiver on such terms as the Farm Credit Administration considers appropriate.

“(d) JUDICIAL REVIEW OF APPOINTMENT.—Notwithstanding subsection (i)(1), within 30 days after a conservator or receiver is appointed pursuant to subsection (b), the Corporation may bring an action in the United States District Court for the District of Columbia for an order requiring the Farm Credit Administration Board to remove the conservator or receiver, and the court shall, on the merits, dismiss such action or direct the Farm Credit Administration Board to remove the conservator or receiver. On the commencement of such an action, any court having jurisdiction of any other action or enforcement proceeding authorized under this Act to which the Corporation is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

“(e) GENERAL POWERS OF CONSERVATOR OR RECEIVER.—The conservator or receiver for the Corporation shall have such powers to conduct the conservatorship or receivership as shall be provided pursuant to regulations adopted by the Farm Credit Administration Board. Such powers shall be comparable to the powers available to a conservator or receiver appointed pursuant to section 4.12(b).

“(f) BORROWINGS FOR WORKING CAPITAL.—If the conservator or receiver of the Corporation determines it is likely that there will be insufficient funds to pay the ongoing administrative expenses of the conservatorship or receivership or that there will be insufficient liquidity to fund maturing obligations of the conservatorship or receivership, the conservator or receiver may borrow funds in such amounts, from such sources, and at such rates of interest as the conservator or receiver deems necessary or appropriate to meet the administrative expenses or liquidity needs of the conservatorship or receivership. The Farm Credit Banks are hereby authorized to loan funds to the conservator or receiver, and to purchase assets of the Corporation, for such purpose.

“(g) AGREEMENTS AGAINST INTERESTS OF CONSERVATOR OR RECEIVER.—No agreement which tends to diminish or defeat the right, title, or interest of the conservator or receiver for the Corporation in any asset acquired by it as conservator or receiver for the Corporation shall be valid against the conservator or receiver unless the agreement—

“(1) is in writing;

“(2) is executed by the Corporation and any person or persons claiming an adverse interest under the agreement, including the obligor, contemporaneously with the acquisition of the asset by the Corporation;

“(3) is approved by the Board or an appropriate committee of the Board, which approval shall be reflected in the minutes of the Board or committee; and

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

“(h) REPORT TO THE CONGRESS.—Upon a determination by the receiver for the Corporation that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the financial condition of the receivership.

“(i) TERMINATION OF AUTHORITIES.—

“(1) CORPORATION.—The charter of the Corporation is canceled, and the authority provided to the Corporation by this title shall terminate, at such date as the Farm Credit Administration Board determines is appropriate, following the placement of the Corporation in receivership but not later than the conclusion of the receivership and discharge of the receiver.

“(2) OVERSIGHT.—The Office of Secondary Market Oversight established pursuant to section 8.11 is abolished, and section 8.11(a) and subtitle B shall have no force or effect, at such date as the Farm Credit Administration Board determines is appropriate, following the placement of the Corporation in receivership but not later than the conclusion of the receivership and discharge of the receiver.”.

## BRIEF EXPLANATION

H.R. 2130, the Farmer Mac Reform Act of 1995, makes substantial changes in Title VIII of the Farm Credit Act of 1971, as amended, governing the secondary market for agricultural real estate and rural housing loans. These loans are originated by commercial banks and the cooperative farm credit system as well as by insurance companies and the securities are guaranteed by the Federal Agricultural Mortgage Corporation, also known as "Farmer Mac".

The bill would significantly change the way Farmer Mac does business by liberalizing the institution's charter, allowing it to pool loans in a similar fashion to other government-sponsored secondary markets (such as "Fannie Mae" and "Freddie Mac") and assuming greater credit risk by eliminating the requirement that each pool of loans must be backed up by a 10-percent subordinated interest or cash reserve. During the three-year period following the bill's enactment, Farmer Mac's statutory minimum capital requirements also would be liberalized. The Farm Credit Administration's (FCA) Office of Secondary Market Oversight (OSMO) would be given an additional three years following enactment to implement risk-based capital requirements for Farmer Mac.

The legislation requires Farmer Mac to recapitalize its core capital base to at least \$25 million within two years following enactment or within six months after Farmer Mac's aggregate on-balance sheet assets equal or exceed \$2 billion, whichever occurs first.

In addition, the legislation amends those sections of current law that would streamline Farmer Mac's business operations, such as requiring the Federal Reserve Banks to act as depositories and fiscal agents for Farmer Mac's securities and providing for Farmer Mac's access to the book-entry system of the Federal Reserve System.

## PURPOSE AND NEED

Farmer Mac originally was established to bring lower-cost, long-term real estate financing to U.S. farmers and ranchers who had been battered by economic volatility during the late 1970s and the subsequent farm recession throughout much of the 1980s. Because agricultural producers depend on adequate credit availability and sound financial services as much as any other sector of the U.S. economy, Congress has intervened from time to time to make certain those credit sources are readily at hand. The creation of Farmer Mac was such an intervention at a critical time for American agriculture.

Congress intended for Farmer Mac to be a new source of credit by creating secondary market efficiencies and cost benefits that many other government-sponsored enterprises such as Fannie Mae and Freddie Mac have brought to the Nation's housing sector. To date, Farmer Mac has failed to meet the expectations of Congress.

H.R. 2130, the Farmer Mac Reform Act of 1995, is the most extensive attempt yet to make Farmer Mac a viable secondary market for agricultural real estate and moderate rural housing loans.

Farmer Mac's basic law has been amended twice since its establishment in 1988 as a part of the Agricultural Credit Act of 1987.

In 1990 legislation, Congress created the Farmer Mac II program for USDA guaranteed loans and, shortly thereafter in 1991, authorized the Farmer Mac I linked portfolio strategy as well as establishing the Office of Secondary Market Oversight (OSMO) within FCA and setting minimum capital requirements.

Unfortunately, Farmer Mac has not met its mandate, and although Farmer Mac's capital base has been severely dissipated over the years of its operation, no federal liability has been assumed by Farmer Mac's activities. Farmer Mac was initially capitalized with \$21 million of private investments of banks, institutions of the Farm Credit System and insurance companies. That equity has declined by more than \$9.5 million, and OSMO estimates that Farmer Mac will be short of sufficient core capital by the end of 1996 or very early 1997.

As mentioned previously, Farmer Mac currently operates two programs: Farmer Mac I is composed of agricultural real estate and rural housing loans that meet specified credit standards and are packaged by Farmer Mac-certified poolers. Each pool must be backed with a 10-percent subordinated participation interest or cash reserve. This subordinated piece may be sold to investors but pricing difficulties caused by the risk attached to the subordinated interest has not made a marketable product. Farmer Mac guarantees the timely payments on securities that are purchased by investors or by Farmer Mac directly.

Farmer Mac II is the program for guaranteed loans of the U.S. Department of Agriculture, including farmer program loans, business and industry and community facility loans.

Farmer Mac has guaranteed seven pools since December, 1991, when the first pool was initiated with an approximate principal value of \$112 million. Original principal value of the seven pools was about \$800 million consisting of nearly 2500 loans with an average loan size of approximately \$325,000. Three pools were guaranteed in 1992, none in 1993; and a 1994 pool was liquidated and reformed in May 1995. One additional pool was guaranteed in 1995.

Currently, Farmer Mac has three certified poolers actively in the market: Equitable Agri-Business, Inc., was certified in November, 1991; AgFirst Farm Credit Bank located in Columbia, S.C., was certified in December, 1992, as the Columbia Farm Credit Bank; and Western Farm Credit Bank was certified in April, 1993.

As FCA Chairman Marshal Martin pointed out during hearings on H.R. 2130, Farmer Mac has been plagued by unfavorable credit conditions, including stagnant loan demand, lenders with ample funds to lend, and lower, short-term interest rates compared to longer-term interest rates. FCA also agreed with Farmer Mac officials and lenders that providing Farmer Mac with authority to purchase and pool loans as well as eliminating the 10-percent subordinated interest (with discretion to provide lower than 10-percent) would make Farmer Mac's program a more effective secondary market.

Farmer Mac, represented by its Board Chairman, Gene Branstool, testified there is a need for a secondary market serving agriculture and rural areas. By implementing the reform measures in H.R. 2130, Farmer Mac believes its activities could reduce aver-

age loan rates by at least one-half of a percentage point, saving U.S. farmers and ranchers more than \$250 million per year.

According to Farmer Mac testimony before the Subcommittee on Resource Conservation, Research and Forestry, a viable Farmer Mac will benefit agricultural and rural housing borrowers in much the same way as Fannie Mae and Freddie Mac has benefited residential loan markets. Experience thus far in the 1990s has shown that urban residential mortgage borrowers refinanced in record numbers; increasing from about 40 percent to 80 percent in fixed rate mortgages; during the same period, farm real estate borrowers shifted only from about 18 percent with fixed rate mortgages to somewhat less than 40 percent. With more competition in agricultural credit markets, Farmer Mac estimates that long-term agricultural loan rates could decrease by as much as one percent on average.

## COMMITTEE CONSIDERATION

### I. HEARINGS

The Subcommittee on Resource Conservation, Research and Forestry, chaired by Congressman Wayne Allard, held a hearing December 7, 1995, on the status of the Federal Agricultural Mortgage Corporation and H.R. 2130, the Farmer Mac Reform Act of 1995.

Ms. Marsha Martin, chairman of the Farm Credit Administration, offered FCA's views on Farmer Mac and H.R. 2130. Ms. Martin was accompanied by Ms. Suzanne McCrory, director of FCA's Office of Secondary Market Oversight. Gene Branstool, chairman of the board of directors of Farmer Mac, presented testimony to the Subcommittee; he was accompanied by Mr. Clyde Southern, Farmer Mac vice chairman; Mr. Henry D. Edelman, Farmer Mac president and chief executive officer; and Mr. James Cirona, president and chief executive officer of the Western Farm Credit Bank. Mr. Charles O. Sethness, a former Under Secretary for Domestic Finance, U.S. Department of the Treasury, also offered views on the status of Farmer Mac and the legislation under consideration.

Although the Treasury and Agriculture departments were invited to testify before the Subcommittee, they declined the invitation. Prior to convening the hearing, John D. Hawke, Jr., Under Secretary for Domestic Finance at the Department of the Treasury, sent an undated letter to the Subcommittee's Ranking Minority Member Tim Johnson offering views on Farmer Mac. Secretary Hawke's letter was not an official Administration position but did offer some concerns about Farmer Mac and government-sponsored enterprises generally. Other interested parties provided written statements for the hearing record.

### II. FULL COMMITTEE CONSIDERATION

Pursuant to notice, the Committee met in open meeting on December 13, 1995, to consider the bill, H.R. 2130, the Farmer Mac Reform Act of 1995. Chairman Roberts discharged the Subcommittee on Resource Conservation, Research and Forestry to whom the bill had been referred from further consideration of the bill and recognized Mr. Emerson, the original sponsor of the bill, to explain the legislation. Messrs. Emerson and Johnson offered an amendment

in the nature of a substitute to H.R. 2130, and Mr. Emerson explained the amendment.

Chairman Roberts recognized Mrs. Clayton who offered amendment to the substitute to the bill. The Clayton amendment sought to clarify language in the substitute bill dealing with FCA receivership authority to grandfather certain ongoing secondary market relationships that have developed under Farmer Mac and Fannie Mae's secondary markets for rural housing loans.

On June 20, 1995, AgFirst Farm Credit Bank, Fannie Mae and Farmer Mac established a partnership to pool and securitize rural home loans. This is a national program that AgFirst will buy qualified loans in rural areas and towns of 2,500 persons or fewer and issues securities based on the pool. Farmer Mac will guarantee securities, and Fannie Mae will buy both the guaranteed and subordinated securities. The Clayton amendment was designed to continue AgFirst's pooling status for these loans should Farmer Mac be placed in receivership.

Following a brief debate among Members of the Committee—and on the recommendation of Mr. Emerson, who indicated to Mrs. Clayton that he would work with her on acceptable compromise language, Mrs. Clayton withdrew the amendment.

There were no further amendments to the bill, and the amendment in the nature of a substitute to the bill, H.R. 2130 was adopted by a voice vote in the presence of a quorum with the recommendation that the bill, as amended, do pass.

### III. ROLLCALL VOTES

There were no rollcall votes in the full Committee.

### ADMINISTRATION POSITION

The views of the Administration on H.R. 2130, as amended, to amend the Farm Credit Act of 1971 to improve the efficiency and operation of the Federal Agricultural Mortgage Corporation in order better to ensure that farmers, ranchers and rural home owners will have access to a stable and competitive supply of mortgage credit now and in the future, are set forth in the following letters to the Chairman of the Committee on Agriculture from the Secretary of Agriculture and the Under Secretary for Domestic Finance, Department of the Treasury:

DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
*Washington, DC December 12, 1995.*

Hon. PAT ROBERTS,  
*Chairman, House Agriculture Committee,*  
*1300 Longworth House Office Building, Washington, DC.*

DEAR PAT: I am writing to express the Department of Agriculture's (USDA) views on the status of the Federal Agricultural Mortgage Corporation (Farmer Mac) and on H.R. 2130, the Farmer Mac Reform Act of 1995. I regret that USDA was not in a position to testify at the recent hearing before the House Agriculture Committee Resource Conservation, Research, and Forestry Subcommittee on this issue and hope that this letter is helpful to you when

the House Agriculture Committee markup this important legislation.

Farmer Mac has obviously not been successful and is likely to fail if it not reformed. The original goal of Farmer Mac remains valid today—farmers and ranchers could benefit from greater use of fixed-rate, long-term credit during periods of highly variable upward interest rates. It is possible that a reform Farmer Mac would improve the prospects of increasing the availability of fixed rate, long-term credit. This could result in significant economic benefit to American agriculture and the entire rural economy.

If Congress chooses to reform Farmer Mac, it must adequately protect American taxpayers from the risk that Farmer Mac would need to borrow from the Treasury in order to honor its obligations under guarantees which it has issued. We believe that it is possible to reform Farmer Mac in such a way that there is little risk to the taxpayers. Retaining a first-loss requirement could provide such protection. However, other adequate protection could include such measures as retaining the geographic and commodity diversity requirements in current law, providing a more limited extension of the time in which Farmer Mac must meet minimum capital adequacy standards, or increasing capital reserve requirements. The specific provisions in any final bill would obviously have to be evaluated carefully before making a formal determination regarding the sufficiency of such protection.

I hope this information is helpful and thank you for your leadership in addressing this important issue. A similar letter is being sent to Congressman de la Garza, Emerson, Allard, and Johnson.

Sincerely,

DAN GLICKMAN, *Secretary*.

---

DEPARTMENT OF THE TREASURY,  
Washington, DC, ——— ———.

Hon. WAYNE ALLARD,  
*Chairman, Committee on Agriculture, Subcommittee on Resource Conservation, Research, and Forestry, Longworth House Office Building, Washington, DC.*

DEAR CHAIRMAN ALLARD: Thank you for inviting the Treasury Department to testify on the status of the Federal Agricultural Mortgage Corporation (Farmer Mac), and the specifics of the Farmer Mac Reform Act of 1995, H.R. 2130. While we are not in a position to testify at the December 7, 1995, hearing, we nonetheless, want to bring to your attention some concerns that relate to Government Sponsored Enterprises (GSEs).

We commend the Subcommittee for examining the efficiency of the capital market that provides mortgages for farmers and ranchers.

Farmer Mac was created, as a federally chartered, private corporation, to redress perceived inefficiencies in the allocation of mortgage credit to agricultural real estate. When Farmer Mac was created, it was argued that the predominance of variable rate farm credit in the early 1980s contributed to the farm financial crisis of the mid-1980s. Farmer Mac was envisioned to operate along the lines of the successful secondary markets for residential mortgages.

Farm real estate loans would be originated by participating lenders, pooled by third party financial institutions, guaranteed by Farmer Mac and sold to investors in the form of securities. Originators would use the proceeds from the sale of loans to make new loans, enhancing the competitiveness of real estate mortgage markets, and expanding the supply of long-term credit available for farmers and ranchers.

Fortunately, our capital markets generally operate efficiently. There are occasions, however, where it is beneficial to have a limited Federal government intervention. Intervention carries with it the risk that it will create significant distortions in the market and increase the costs to others, and expose taxpayers to significant contingent liabilities. Because of these risks, we continually urge great caution that the federal government intervene only when there is a demonstrably substantial public benefit. In light of these concerns, we suggest that the Subcommittee carefully consider the merits of any proposal to modify or extend any government sponsored enterprise by determining: first, is there a market failure or inefficiency that merits Federal intervention; second, will the enterprise effectively address such market failures or inefficiencies; and third, will it be adequately capitalized, satisfy high credit and operational standards, and be subject to effective regulatory supervision, in order to minimize potential taxpayer liabilities.

We understand that there is anecdotal evidence that bankers are reluctant to provide long-term fixed rate mortgages, but we can not positively conclude that there are systematic inefficiencies in the allocation of credit in the agricultural real estate market. Farmers and Ranchers could benefit from greater access to fixed-rate and long term credit. Solutions that might make the Farmer Mac structure more efficient should not be confused with the fundamental issue of whether there exists a market inefficiency.

The proposed legislation would significantly expand the role and authorities of Farmer Mac, permitting it to take a more active role in farm lending. Farmer Mac would be provided with authority to borrow in capital markets to purchase mortgages directly from the originators and issue guaranteed securities backed by the mortgages, all without the existing requirement of holding a segregated reserve against first losses prior to the exposure of a federally-backed support. It is important that capital reserve requirements of a GSE keep pace with expected losses. Farmer Mac could then either hold these pools within its portfolio of assets or sell them to investors. The removal of a "first-loss investor" in Farmer Mac securities coupled with the elimination of the requirement for diversified loan pools, could expose the Federal government to greater risk that Farmer Mac's line of credit with Treasury will be used. The obligations of Farmer Mac are explicitly supported by a \$1.5 billion line of credit with Treasury, which may be drawn upon in the event that Farmer Mac is unable to satisfy its guarantees. Circumstances that would lead to such a draw, would also make it difficult for Farmer Mac to repay such loans.

We believe that it is important to provide safety and soundness regulators with the authority to properly handle failing enterprises. Consistent with that view, we strongly encourage the Subcommittee to adopt legislation that provides authority for the Farm Credit

Administration to appoint a receiver. Currently, there is no orderly mechanism to wind up Farmer Mac's affairs, in the event that it remains an unsuccessful operation.

Sincerely,

JOHN D. HAWKE, Jr.,  
*Under Secretary for Domestic Finance.*

Relevant portions of a letter submitted by the Chairman of the Committee on Agriculture, U.S. House of Representatives and the Chairman of the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate to the Chairman of the Farm Credit Administration Board relating to the operation of the Farmer Mac:

U.S. SENATE,  
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,  
*Washington, DC, December 22, 1995.*

Hon. MARSHA MARTIN,  
*Chairman of the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA.*

DEAR MS. MARTIN: Although we know that FCA has evaluated the legislation and determined that it is adequate to reasonably protect the government interest in Farmer Mac, there are still concerns about the safe and sound operations of the program during the period of capital deferral provided for in the legislation. Accordingly, it is our intent that the FCA, in a cooperative effort with the Department of the Treasury, monitor and review the operations and financial condition of Farmer Mac and report in writing to the appropriate subcommittees of the House Agriculture Committee, the House Banking and Financial Services Committee and the Senate Agriculture, Nutrition, and Forestry Committee at six-month intervals during the capital deferral period and beyond, if necessary. We also expect that any expenses incurred by FCA and the Treasury in carrying out this request will be charged back to Farmer Mac through the authority in Title VIII of the Farm Credit Act of 1971 that is currently used by FCA to recover its regulatory expenses.

Sincerely,

RICHARD G. LUGAR, *Chairman,*  
PAT ROBERTS, *Chairman,*  
*House Committee on Agriculture.*

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides for this Act to be cited as the "Farmer Mac Reform Act of 1995".

##### *Sec. 2. References to the Farm Credit Act of 1971*

Section 2 is a technical amendment that provides that all amendments, repeals or references made by this Act relate to a section or other provision of the Farm Credit Act of 1971, unless otherwise expressly provided.

*Sec. 3. Definition of real estate*

Section 3 amends section 8.0(1)(B)(ii) to clarify that the term agricultural real estate means a principal residence that is a single family dwelling located in a rural area, excluding any “dwelling”, excluding the land to which that the dwelling is affixed, with a value exceeding \$100,000 (as adjusted for inflation).

*Sec. 4. Definition of certified facility*

Section 4, clause (1) makes a technical change in section 8.0(3)(A), the definition of “certified facility”, to conform the reference therein to a “secondary marketing agricultural loan facility” to the terminology used elsewhere in the Farm Credit Act of 1971, namely “agricultural mortgage marketing facility.”

Clause (2) amends section 8.0(3)(B) to authorize Farmer Mac to act in the capacity of a certified facility for qualified loans under the Farmer Mac I program (i.e., to act as a pooler), by striking from the definition existing language that otherwise limits Farmer Mac’s authority in this capacity to make loans that are guaranteed by USDA and purchased under the Farmer Mac II program.

*Sec. 5. Duties of Federal Agricultural Mortgage Corporation*

Section 5 amends section 8.1(b), which sets forth the enumerated duties of the Corporation (Farmer Mac), to add specific new duties for the purchase of qualified loans and the issuance of guaranteed securities representing interests in or obligations backed by such loans, that are guaranteed by the Corporation for the timely repayment of principal and interest.

*Sec. 6. Powers of the corporation*

Section (6) amends section 8.3, the enumerated “powers” of the Corporation, to specifically grant the Corporation the power to purchase, hold, sell or assign qualified loans, to issue guaranteed securities representing an interest in, or an obligation backed by, such loans, and to perform all of the functions and responsibilities of an agricultural mortgage marketing facility operating as a certified facility under the Farmer Mac program.

*Sec. 7. Federal Reserve banks as depositories and fiscal agents*

Section (7), clause (1) amends section 8.3(d) to require the Federal Reserve Banks to act as depositories and fiscal agents for the Corporation’s securities. Current law authorizes, but does not require, the Federal Reserve banks to act as depositories and to so perform as fiscal agent for the Corporation.

Section (7), clause (2) amends section 8.3(e) to provide the Corporation access to the Federal Reserve System book-entry system for purposes of trading its securities. Current law authorizes, but does not require, the Department of the Treasury to allow book-entry access to the Corporation’s securities.

*Sec. 8. Certification of agricultural mortgage marketing facilities*

Section (8), clause (1) amends section 8.5(a) by inserting a parenthetical clause in two places to clarify that the eligibility standards for the certification of agricultural mortgage marketing facilities other than the Corporation, set forth therein, do not apply to

the Corporation, which is designed by this Act to act as a certified agricultural mortgage marketing facility.

Clause (2) amends section 8.5(e)(1) by striking a parenthetical clause to clarify that the Corporation, alone or in concert with other Farm Credit System institutions, may establish and operate as an agricultural mortgage marketing facility through an affiliated organization established for that purpose.

*Sec. 9. Guarantee of qualified loans*

Subsection (e), clause (1) amends section 8.6(a)(1) to clarify that the Corporation is authorized to issue securities, guaranteed as to the timely repayment of principal and interest, that represent an interest in, or an obligation fully backed by, a pool of qualified loans that meet the standards for qualified loans established in section 8.8 and that were purchased and held by the Corporation.

Clause (2) amends subsection 8.6(d) by striking out paragraph (4) thereof, which under existing law would prohibit the inclusion in a pool of loans guaranteed by the Corporation any loan with recourse to the originator, and renumbers the remaining paragraphs of this subsection.

Clause (3) amends subsection 8.6(g)(2) to include a cross reference to section 8.0(9), the definition of “qualified loan”, which would authorize the Corporation to issue debt obligations to fund the purchase of qualified loans that meet the standards for the Farmer Mac I program, in addition to the Corporation’s existing authority to issue debt obligations for the purchase of qualified loans under the Farmer Mac II program (USDA guaranteed loans) and for maintaining reasonable amounts of funds for business operations.

*Sec. 10. Mandatory reserves and subordinated participation interests eliminated*

Subsection (a) repeals section 8.6(b). Under existing law, section 8.6(b) requires a minimum 10% cash reserve or subordinated participation interest to be maintained by the lenders or poolers (or to be sold to investors) originating and assembling the loans in each pool as a condition of the Corporation’s guarantee of the loan backed securities representing no more than 90% of the principal value of the loans in each pool. The effect of this change is to authorize the Corporation to guarantee securities backed by pools of qualified loans under the program up to 100% of the principal value of the loans in each pool.

Subsection (b) repeals section 8.7. Under existing law, section 8.7 provides standards for the establishment of cash reserves and subordinated participation interests required to be maintained under section 8.6(b). The repeal of section 8.6(b) in subsection (a) makes section 8.7 unnecessary.

*Sec. 11. Standards requiring diversified pool*

Section 11 repeals subsection 8.6(c), standards requiring diversified pools, and appropriately redesignates the remaining subsections. This change allows the Corporation to purchase individual qualified loans or small groups of qualified loans, in its new capacity as an agricultural mortgage marketing facility, that without

this amendment would not meet the existing law pool diversification requirements.

*Sec. 12. Small farms*

Section 12 amends subsection 8.8(e) to require the Board of the Corporation to promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market. This change preserves the existing law small farm provision in subsection 8.6(c), the pool diversification requirements repealed in section 11 (see above).

*Sec. 13. Definition of an affiliate*

Section 13 amends section 8.11(e), definition of “affiliate”, by deleting the references to “certified facility” and to paragraph (3) of section 8.0 therein. This amendment authorizes the Corporation to establish an affiliate to carry out its pooling functions. Under existing law the Corporation is authorized to establish affiliates, but is prohibited from establishing an affiliate to act as a certified facility.

*Sec. 14. State usury laws superseded*

Section 14 amends section 8.12 by striking subsection (d), which currently provides an exemption from State usury laws for loans included in pool guaranteed by the Corporation, and inserting in lieu thereof a revised text which incorporates the existing provision and, in addition, adds specific reference to prepayment penalty (either fixed or declining), yield maintenance, or make-whole payment provisions charged, taken or received by an agricultural lender or certified facility in connection with the full or partial prepayment of a loan. The revision also provides that any State usury law exempted under this section shall not apply to an agricultural loan made in accordance with title VIII of the Farm Credit Act of 1971 for sale to the Corporation or to a certified facility for inclusion in a pool for which the Corporation has provided or has committed to provide a guarantee, only if the loan is actually sold to the Corporation or included in such a pool within 180 days after the date the loan was made.

*Sec. 15. Extension of capital transition period*

Section 15, clause (1) amends section 8.32(a), which directs the Farm Credit Administration to establish a risk-based capital test for Farmer Mac, by eliminating the reference to the two-year period beginning on December 13, 1991 and providing for the promulgation of such risk-based capital regulation by the Director of the Office of Secondary Market Oversight within the FCA, beginning three years after the enactment of this Act, but not sooner.

Clause (2) amends section 8.32(b)(2), by extending the five-year period, established in that section, after which the Director is required to examine and possibly revise the risk-based capital test promulgated under subsection (a), to eight years.

Clause (3) amends section 8.32(d) by adding a new clause providing that the public notice of proposed rulemaking to be issued by the Director in connection with establishing the risk-based capital test provided for in subsection (a), shall not be published for public comment until after the expiration of the three-year time period as

set forth in subsection (a), and by reformatting the text of this subsection into numbered paragraphs.

*Sec. 16. Minimum capitalization level*

Section 16 amends section 8.33 to provide for the minimum level of core capital to be maintained by the Corporation during a three year transition period following the enactment of the Act and thereafter, as is described as follows.

New subsection 8.33(a) provides that the minimum capital level for the Corporation shall be an amount of core Capital equal to the sum of 2.75 percent of the Corporation's aggregate on-balance sheet assets, as determined by generally accepted accounting principles, plus 0.75 percent of the aggregate off-balance sheet obligations of the Corporation specifically including: (A) the unpaid principal balance of outstanding securities guaranteed by the Corporation and backed by pools of qualified loans; (B) instruments issued or guaranteed by the Corporation that are substantially equivalent to the securities described in category (A); and (C) other off-balance sheet obligations of the Corporation.

New subsection 8.33(b), paragraph (1) establishes a transition period for the Corporation's minimum capital requirements as follows:

(A) Prior to January 1, 1997, the Corporation's minimum amount of core capital shall be the sum of 0.45 percent of the aggregate off-balance sheet obligations, plus 0.45 percent of designated on-balance sheet assets as defined in paragraph (2), plus 2.50 percent of on-balance sheet assets other than designated assets;

(B) During the 1-year period ending December 31, 1997, the Corporation's minimum capital shall be the sum of 0.55 percent of the aggregate off-balance sheet obligations, plus 1.20 percent of designated on-balance sheet assets, plus 2.55 percent of on-balance sheet assets other than designated assets;

(C) During the 1-year period ending December 31, 1998, the Corporation's minimum capital shall be the sum of 0.65 percent of the aggregate off-balance sheet obligations, plus 1.95 percent of designated on-balance sheet assets, plus 2.65 percent of on-balance sheet assets other than designated assets, except that if the Corporation's core capital is less than \$25,000,000 on January 1, 1998, the amount of minimum capital level shall be the amount specified under subsection (a); and

(D) On and after January 1, 1999, the minimum capital level of the Corporation shall be the amount of capital determined under subsection (a).

New subsection 8.33(b), paragraph (2) defines "designated on-balance sheet assets of the Corporation to mean: (A) the aggregate on-balance sheet assets acquired under the Linked Portfolio option under section 8.6(e); plus (B) the aggregate amount of qualified loans purchased and held by the Corporation under section 8.3(c)(13).

*Sec. 17. Critical capital level*

Section 17 amends section 8.34(3) by clarifying that the Corporation's critical capital level shall be an amount of core capital equal to 50 percent of the total minimum capital requirement under section 8.33.

*Sec. 18. Enforcement levels*

Section 18 makes a technical change in section 8.35(e) to coincide the grace period provided under the Act for classifying the Corporation within level I capital compliance with the actual effective date of the risk-based capital regulation to be issued by the Director under section 8.32.

*Sec. 19. Recapitalization of the corporation*

Section 19 adds a new section 8.38, which provides for the recapitalization of the Corporation within two years after the enactment of this Act, as described in the following paragraphs.

New subsection 8.38(a) provides for the mandatory recapitalization of the Corporation by requiring it to increase its total core capital to at least \$25 million within 2 years after the enactment of the Act or within 180 days after the end of the first calendar quarter that the aggregate on-balance sheet assets of the Corporation, plus outstanding off-balance sheet obligations equal or exceed \$2 billion, whichever occurs sooner.

New subsection 8.38(b) provides that in carrying out the provisions of this section the Corporation may use its existing authorities to issue stock under section 8.4 or any other recognized and legitimate means of raising core capital within the Corporation's powers under section 8.3.

New subsection 8.38(c) provides that during the 3-year period following enactment of the Act, the Corporation's total on-balance sheet assets plus off-balance sheet obligations may not exceed \$3 billion, unless and until the Corporation's total core capital is at least \$25 million.

New subsection 8.38(d) provides that if the Corporation fails to meet the requirements of subsection (a) to raise its core capital level within the applicable time frame provided for therein, it may not purchase new qualified loans or to issue or guarantee new loan-backed securities until its core capital level is increased to \$25 million or more. In effect, this subsection sunsets the Corporation's authority to buy new loans or issue new securities if it does not raise its core capital to at least \$25 million within the time frames provided for in subsection (a).

*Sec. 20. Borrower stock*

Section 20 adds a new subsection (f) to section 4.3A of the Farm Credit Act of 1971 and appropriately redesignates the remaining subsection thereof. The new subsection (f) provides that, notwithstanding any other provision of this section, the bylaws adopted by a bank or association under subsection (b) may provide: (A) in the case of a loan originated after the date of enactment of this Act, that the requirements applicable to Farm Credit System (FCS) borrowers to purchase voting stock or participation certificates will not apply, if at the time the loan is made it is designated for sale into

the secondary market; and (B) in the case of a loan made before the date of enactment of this Act that is sold into the secondary market, that all outstanding voting stock or participation certificates held by the borrower on the loan will be retired. This subsection shall apply regardless of whether the bank or association holds a subordinated participation interest in the loan or pool of loans or contributes to a cash reserve with respect thereto. Further, this subsection provides that the waiver of the borrower stock provisions under this subsection shall not be effective with respect to any loan that is not sold into the secondary market within 180 days of the designation of the loan for such sale, but that borrower stock shall be retired if such loan is sold into the secondary market after the 180-day period.

*Sec. 21. Liquidation of the Federal Agricultural Mortgage Corporation*

Section 21 amends Title VIII of the Farm Credit Act of 1971 by adding at the end thereof a new Subtitle C entitled “Receivership; Conservatorship; Liquidation of the Federal Agricultural Mortgage Corporation”, and a new section 8.41 entitled “Conservatorship; Liquidation; Receivership.—”. The provisions of the new section 8.41 are described in the following paragraphs.

New subsection 8.41(a) Voluntary Liquidation, provides that the Corporation may voluntarily liquidate only with the consent of the Farm Credit Administration (FCA) Board and in accordance with a plan of liquidation approved by the FCA Board.

New subsection 8.41(b) Involuntary Liquidation, provides that the FCA Board may appoint a conservator or receiver for the Corporation under the circumstances specified in section 4.12(b) of the Farm Credit Act of 1971, and in the case of the appointment of a conservator, also circumstances in addition to those specified in section 8.37. In applying the provisions of section 4.12(b) to the Corporation:

(1) The Corporation shall also be considered insolvent if it is unable to pay its debts as they fall due in the ordinary course of business;

(2) A conservator may also be appointed if the Corporation’s authority to purchase qualified loans or to issue or to issue or guarantee loan-backed securities is suspended by law; and

(3) A receiver may also be appointed for the Corporation if: (A) the Corporation’s authority to purchase qualified loans or to issue or guarantee loan-backed securities is suspended or the Corporation is classified under section 8.35 as within enforcement level III or IV, and the alternative actions available under Subtitle B are not satisfactory; and (B) the FCA determines that the appointment of a conservator would not be appropriate.

New subsection 8.41(c) Appointment of Conservator or Receiver, provides in paragraph (1) that notwithstanding the provisions of section 4.12(b), a person qualified to serve as a conservator of receiver of the Corporation shall be:

(A) the FCA or any government entity or employee, including the FCS Insurance Corporation; or

(B) any person who have no claim against or financial interest in the Corporation, or any other basis for a conflict of interest, and has the financial and management expertise to direct the affairs of and to liquidate the Corporation if necessary.

Paragraph (2) provides that the conservator or receiver and employees thereof are entitled to compensation in amounts no greater than the compensation provided to federal employees for similar services, except that the FCA may pay higher rates, not in excess of the prevailing rates in the private sector, if it determines this necessary to retain competent personnel. The paragraph also authorizes the conservator or receiver to contract with any government entity for the use of personnel, services and facilities on terms mutually agreed to between the parties and authorizes each such government entity to provide such. Paragraph (3) provides that the conservator or receiver shall pay valid claims for the expenses of the conservatorship or receivership, including compensation and any loan made by the conservator or receiver, before paying any other claim against the Corporation and that such claims may be secured as a priority lien against such property of the Corporation as the receiver determines. Paragraph (4) provides that any conservator or receiver who is not a federal entity or federal employee shall not be personally liable for damages in tort or otherwise for acts or omissions in connections with carrying out the receivership except for gross negligence or intentional tortious or criminal conduct. Paragraph (5) provides that the FCA may indemnify the conservator or receiver on such terms as the FCA considers appropriate.

New subsection 8.41(d) Judicial Review of Appointment, provides that, notwithstanding the provisions of subsection (i)(1) for termination of the authorities of the Farmer Mac Corporation, within 30 days after the appointment of a conservator or receiver, the Corporation may seek an order in the U.S. District Court for the District of Columbia to require that FCA remove the conservator or receiver, and based on the merits of the case, the court shall either dismiss the action or direct FCA to remove the conservator or receiver. On the commencement of such action, all other judicial proceedings to which the Corporation is a party shall be stayed pending the outcome of such action.

New subsection 8.41(e) General Powers of Conservator or Receiver, provides that the powers of the conservator for Farmer Mac shall be provided for in regulations issued by the FCA and that such powers shall be comparable to the powers available to a conservator or receiver appointed for any other System institution under section 4.12(b) of the Farm Credit Act of 1971.

New subsection 8.41(f) Borrowings for Working Capital, provides that, if the conservator or receiver determines that it is likely there will be insufficient funds to pay the administrative expenses of the conservatorship or receivership or to fund maturing obligations thereof, the conservator or receiver may borrow such funds, from such sources, at such rates as the conservator or receiver determines to be necessary to meet the expenses or the liquidity needs of the conservatorship or receivership. FSC banks are authorized to lend to the conservator or receiver and to be eligible to purchase the assets of the Corporation for such purposes.

New subsection 8.41(g) Agreements Against Interests of Conservator or Receiver, provides that no agreement which tends to diminish or defeat the right, title, or interest of the conservator or receiver in any assets acquired from the Corporation shall be valid against the conservator or receiver unless the agreement: (1) is in writing; (2) is executed by the Corporation and the person asserting the adverse interest, including the obligor, contemporaneously with the acquisition of the asset by the Corporation; (3) is approved by the Board, or an appropriate Board committee, and is recorded in the minutes of such; and (4) has been continuously, from the time of its execution, an official record of the Corporation.

New subsection 8.41(h) Report to the Congress, provides that, upon a determination by the receiver that the assets of the Corporation in receivership are inadequate to pay all valid claims against the Corporation, the receiver shall submit to the Secretary of the Treasury and to the House and Senate Agriculture Committees a report of the financial condition of the receivership.

New subsection 8.41(i) Termination of Authorities, provides in paragraph (1) that the Corporation's charter is canceled and its canceled and its authority to do business under Title VIII shall terminate on such date as determined by the FCA Board, following the placement of the Corporation in receivership, but not later than the termination of the receivership and discharge of the receiver. Paragraph (2) provides that the Office of Secondary Market Oversight of the FCA shall be abolished and its authorities under section 8.11(a) and subtitle B shall have no force and effect at such date as the FCA Board determines is appropriate, following the placement of the Corporation in receivership, but not later than the conclusion of the receivership and discharge of the receiver.

#### 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)(C)(3) of rule XI of the Rules of the House Representatives and section 403 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, December 20, 1995.*

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2130, the Farmer Mac Reform Act of 1995, as ordered reported by the House Committee on Agriculture on December 13, 1995. CBO estimates that enacting the bill would have no effect on the federal budget or on the budgets of state or local governments. Enacting H.R. 2130 could affect direct spending; therefore, pay-as-

you-go procedures would apply to the bill. The likelihood of an impact on direct spending is relatively small, however, and we estimate that there would be no change in direct spending over the 1996–2000 period.

H.R. 2130 would amend current law with respect to the Federal Agricultural Mortgage corporation (Farmer Mac). Farmer Mac, a government-sponsored enterprise, was established by the Agricultural Credit Act of 1987 (Public Law 100–233) to facilitate creation of a secondary market for farm and rural housing mortgage loans. Farmer Mac guarantees securities formed by certified loan pooling institutions, and currently has a portfolio representing about \$500 million in guaranteed loans. The bill would amend and broaden Farmer Mac’s powers, principally by providing the corporation with the authority to purchase qualified loans directly and to issue securities representing interests in qualified loans. Current law restricts Farmer Mac to providing guarantees for pools of qualified loans.

Under current law, Farmer Mac can borrow from the Treasury in certain circumstances. Such borrowing would represent a credit risk to the federal government, and thus could result in direct spending to cover any subsidy cost associated with the potential Treasury lending to the corporation. The corporation’s line of credit with the Treasury is limited to \$1.5 billion in outstanding obligations at any one time. CBO does not expect Farmer Mac to experience sufficient losses under current law such that the corporation would have to use the Treasury line of credit. Enacting H.R. 2130 would broaden Farmer Mac’s authorities and could result in an increase in the overall riskiness of its holdings, perhaps resulting in a greater likelihood that the Treasury line of credit would be tapped at some point.

Nevertheless, CBO expects that any effects would be quite small and thus enacting the bill would not significantly increase the likelihood of Treasury assistance. Hence, we estimate that the bill would not affect the federal budget over the 1996–2000 period.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Pete Fontaine.

Sincerely,

JAMES L. BLUM  
(For June E. O’Neill, Director).

#### 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. 2130, as amended, will have no inflationary impact on the national economy.

#### OVERSIGHT STATEMENT

No summary of oversight finding 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. 2130, 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)(l) of rule X of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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 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.—*

*(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of this section, the bylaws adopted by a bank or association under subsection (b) may provide—*

*(A) in the case of a loan made on or after the date of enactment of this paragraph that is designated, at the time the loan is made, for sale into a secondary market, that no voting stock or participation certificate purchase requirement shall apply to the borrower for the loan; and*

*(B) in the case of a loan made before the date of enactment of this paragraph that is sold into a secondary market, that all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.*

*(2) APPLICABILITY.—Notwithstanding any other provision of this section, in the case of a loan sold to a secondary market under title VIII, paragraph (1) shall apply regardless of whether the bank or association retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.*

*(3) EXCEPTION.—*

*(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of this section, if a loan designated for sale under paragraph (1)(A) is not sold into a secondary market during the 180-day period that begins on the date of the designation, the voting stock or participation certificate purchase requirement that would otherwise*

apply to the loan in the absence of a bylaw provision described in paragraph (1)(A) shall be effective.

(B) *RETIREMENT.*—The bylaws adopted by a bank or association under subsection (b) may provide that if a loan described in subparagraph (A) is sold into a secondary market after the end of the 180-day period described in the subparagraph, all outstanding voting stock or participation certificates held by the borrower with respect to the loan shall, subject to subsection (d)(1), be retired.

[(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.

\* \* \* \* \*

## TITLE VIII—AGRICULTURAL MORTGAGE SECONDARY MARKET

### SEC. 8.0. DEFINITIONS.

For purposes of this title:

(1) *AGRICULTURAL REAL ESTATE.*—The term “agricultural real estate” means—

(A) \* \* \*

(B) a principal residence that is a single family, moderate-priced residential dwelling located in a rural area, excluding—

(i) any community having a population in excess of 2,500 inhabitants; and

(ii) any dwelling [with a purchase price], *excluding the land to which the dwelling is affixed, with a value exceeding \$100,000 (as adjusted for inflation).*

\* \* \* \* \*

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

(A) [a secondary marketing agricultural loan] *an agricultural mortgage marketing* facility that is certified under section 8.5; or

(B) the Corporation and any affiliate thereof[, but only with respect to qualified loans described in paragraph (9)(B)].

\* \* \* \* \*

(9) *QUALIFIED LOAN.*—The term “qualified loan” means an obligation—

(A) \* \* \*

(B) that is the portion of a loan guaranteed by the Secretary of Agriculture pursuant to the Consolidated Farm

and Rural Development Act (7 U.S.C. 1921 et seq.), except that—

(i) subsections (b) through ~~[(f)]~~ (d) of section 8.6, and sections ~~[8.7, 8.8,]~~ 8.8 and 8.9, shall not apply to the portion of a loan guaranteed by the Secretary or to an obligation, pool, or security representing an interest in or obligation backed by a pool of obligations relating to the portion of a loan guaranteed by the Secretary; and

\* \* \* \* \*

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

#### **SEC. 8.1. FEDERAL AGRICULTURAL MORTGAGE CORPORATION.**

(a) \* \* \*

(b) DUTIES.—The Corporation shall—

(1) in consultation with originators, develop uniform underwriting, security appraisal, and repayment standards for qualified loans;

(2) determine the eligibility of agricultural mortgage marketing facilities to contract with the Corporation for the provision of guarantees for specific mortgage pools; ~~[and]~~

(3) provide guarantees for the timely repayment of principal and interest on securities representing interests in, or obligations backed by, pools of qualified loans~~[,]~~; and

*(4) purchase qualified loans and issue securities representing interests in, or obligations backed by, the qualified loans, guaranteed for the timely repayment of principal and interest.*

\* \* \* \* \*

#### **SEC. 8.3. POWERS AND DUTIES OF CORPORATION AND BOARD.**

(a) \* \* \*

\* \* \* \* \*

(c) POWERS OF THE CORPORATION.—The Corporation shall be a body corporate and shall have the following powers:

(1) \* \* \*

\* \* \* \* \*

*(13) To purchase, hold, sell, or assign a qualified loan, to issue a guaranteed security, representing an interest in, or an obligation backed by, the qualified loan, and to perform all the functions and responsibilities of an agricultural mortgage marketing facility operating as a certified facility under this title.*

~~[(13)]~~ *(14) To establish, acquire, and maintain affiliates (as such term is defined in section 8.11(e)) under applicable State laws to carry out any activities that otherwise would be performed directly by the Corporation under this title.*

~~[(14)]~~ *(15) To exercise such other incidental powers as are necessary to carry out the powers, duties, and functions of the Corporation in accordance with this title.*

(d) FEDERAL RESERVE BANKS AS DEPOSITARIES AND FISCAL AGENTS.—The Federal Reserve banks [may act as depositories for, or] *shall act as depositories for, and* as fiscal agents or custodians of, the Corporation.

(e) ACCESS TO BOOK-ENTRY SYSTEM.—The [Secretary of the Treasury may authorize the Corporation to use] *Corporation shall have access to* the book-entry system of the Federal Reserve System.

\* \* \* \* \*

**SEC. 8.5. CERTIFICATION OF AGRICULTURAL MORTGAGE MARKETING FACILITIES.**

(a) ELIGIBILITY STANDARDS.—

(1) ESTABLISHMENT REQUIRED.—Within 120 days after the date on which the permanent board first meets with a quorum present, the Corporation shall issue standards for the certification of agricultural mortgage marketing facilities (*other than the Corporation*), including eligibility standards in accordance with paragraph (2).

(2) MINIMUM REQUIREMENTS.—To be eligible to be certified under the standards referred to in paragraph (1), an agricultural mortgage marketing facility (*other than the Corporation*) shall—

(A) \* \* \*

\* \* \* \* \*

(e) AFFILIATION OF FCS INSTITUTIONS WITH FACILITY.—

(1) ESTABLISHMENT OF AFFILIATE AUTHORIZED.—Notwithstanding any other provision of this Act, any Farm Credit System institution [(other than the Corporation)], acting for such institution alone or in conjunction with one or more other such institutions, may establish and operate, as an affiliate, an agricultural mortgage marketing facility if, within a reasonable time after such establishment, such facility obtains and thereafter retains certification under subsection (b) as a certified facility.

\* \* \* \* \*

**SEC. 8.6. GUARANTEE OF QUALIFIED LOANS.**

(a) GUARANTEE AUTHORIZED FOR CERTIFIED FACILITIES.—

(1) IN GENERAL.—Subject to the requirements of this section and on such other terms and conditions as the Corporation shall consider appropriate, the [Corporation shall guarantee] *Corporation—*

(A) *shall guarantee* the timely payment of principal and interest on the securities issued by a certified facility that represents interests solely in, or obligations fully backed by, any pool consisting solely of qualified loans which meet the standards established under section 8.8 and which are held by such facility[.]; and

(B) *may issue a security, guaranteed as to the timely payment of principal and interest, that represents an interest solely in, or an obligation fully backed by, a pool consisting of qualified loans that—*

- (i) meet the standards established under section 8.8;
- and
- (ii) have been purchased and held by the Corporation.

(2) INABILITY OF FACILITY TO PAY.—If the facility is unable to make any payment of principal or interest on any security for which a guarantee has been provided by the Corporation under paragraph (1), [subject to the provisions of subsection (b)] the Corporation shall make such payment as and when due in cash, and on such payment shall be subrogated fully to the rights satisfied by such payment.

\* \* \* \* \*

[(b) RESERVE OR SUBORDINATED PARTICIPATION REQUIREMENTS.—In the case of any pool referred to in subsection (a), the Corporation shall—

[(1) provide a guarantee only with respect to an individual pool of qualified loans on application of a certified facility;

[(2) provide a guarantee only if a reserve, or retained subordinated participating interests, in an amount equal to at least 10 percent of the outstanding principal amount of the loans constituting the pool has been established in accordance with this title;

[(3) require that full recourse be taken against reserves and retained subordinated participating interests before any demand be made by the certified facility with respect to the guarantee of the Corporation; and

[(4) ensure the timely receipt of principal and interest due to security or obligation holders only after full recourse has been taken against such reserves and retained subordinated participating interests.

[(c) STANDARDS REQUIRING DIVERSIFIED POOLS.—

[(1) IN GENERAL.—To reduce the risks incurred by the Corporation in providing guarantees under this section and to further the purposes of this title, the Board shall establish standards governing the composition of each pool of qualified loans (in connection with which such guarantees are provided) over the period during which the commitment to provide guarantees is effective.

[(2) MINIMUM CRITERIA.—The standards established by the Board pursuant to paragraph (1) for pools of qualified loans shall, at a minimum—

[(A) require that each pool consist of loans that—

[(i) are secured by agricultural real estate that is widely distributed geographically;

[(ii) vary widely in terms of amounts of principal; and

[(iii) in the case of land used in the production of agricultural commodities, are secured by agricultural real estate that, in the aggregate, is used to produce a wide range of agricultural commodities;

[(B) prohibit the inclusion in any such pool of—

[(i) any loan the principal amount of which exceeds 3.5 percent of the aggregate amount of principal of all loans in such pool; and

[(ii) 2 or more loans to related borrowers; and

[(C) require that each pool consist of not less than 50 loans.

[(3) SMALL FARMS AND FAMILY FARMERS.—In establishing the standards described in paragraph (2)(A)(ii), the Board shall include provisions that promote and encourage the inclusion of loans for small farms and family farmers in pools of qualified loans.

[(4) CONGRESSIONAL REVIEW.—No standard prescribed under this subsection shall take effect before the later of—

[(A) the end of a period consisting of 30 legislative days and beginning on the date such standards are submitted to Congress; or

[(B) the end of a period consisting of 90 calendar days and beginning on such date.

[(d)] (b) OTHER RESPONSIBILITIES OF AND LIMITATIONS ON CERTIFIED FACILITIES.—As a condition for providing any guarantees under this section for securities issued by a certified facility that represent interests in, or obligations backed by, any pool of qualified loans, the Corporation shall require such facility to agree to comply with the following requirements:

(1) LOAN DEFAULT RESOLUTION.—The facility shall act in accordance with the standards of a prudent institutional lender to resolve loan defaults.

(2) SUBROGATION OF UNITED STATES AND CORPORATION TO INTERESTS OF FACILITY.—The proceeds of any collateral, judgments, settlements, or guarantees received by the facility with respect to any loan in such pool, shall be applied, after payment of costs of collection—

(A) first, to reduce the amount of any principal outstanding on any obligation of the Corporation that was purchased by the Secretary of the Treasury under section 8.13 to the extent the proceeds of such obligation were used to make guarantees in connection with such securities; and

(B) second, to reimburse the Corporation for any such guarantee payments.

(3) LOAN SERVICING.—The originator of any loan in such pool shall be permitted to retain the right to service the loan.

[(4) LOANS WITH RECOURSE TO ORIGINATOR PROHIBITED.—Each loan in the pool shall have been sold to the certified facility without recourse to the originator of such loan (other than recourse to any interest of such originator in a reserve established in connection with such loan or any subordinated participation interest of such originator in such loan).

[(5) COMPLIANCE WITH DIVERSIFIED POOL STANDARDS.—The facility shall comply with the standards adopted by the Board under subsection (c) in establishing and maintaining the pool.]

[(6)] (4) MINORITY PARTICIPATION IN PUBLIC OFFERINGS.—The facility shall take such steps as may be necessary to ensure that minority owned or controlled investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of securities.

**[(7)] (5) NO DISCRIMINATION AGAINST STATES WITH BORROWERS RIGHTS.**—The facility may not refuse to purchase qualified loans originating in States that have established borrowers rights laws either by statute or under the constitution of such States, except that the facility may require discounts or charge fees reasonably related to costs and expenses arising from such statutes or constitutional provisions.

**[(e)] (c) ADDITIONAL AUTHORITY OF THE BOARD.**—To ensure the liquidity of securities for which guarantees have been provided under this section, the Board shall adopt appropriate standards regarding—

- (1) the characteristics of any pool of qualified loans serving as collateral for such securities; and
- (2) transfer requirements.

**[(f)] (d) AGGREGATE PRINCIPAL AMOUNTS OF QUALIFIED LOANS.**—

(1) **INITIAL YEAR.**—During the first year after the date of the enactment of this title, the Corporation may not provide guarantees for securities representing interests in, or obligations backed by, qualified loans (other than loans which back securities issued by Farm Credit System institutions for which the Corporation provides a guarantee) in an aggregate principal amount in excess of 2 percent of the total agricultural real estate debt outstanding at the close of the prior calendar year (as published by the Board of Governors of the Federal Reserve System), less all Farmers Home Administration agricultural real estate debt.

\* \* \* \* \*

**[(g)] (e) PURCHASE OF GUARANTEED SECURITIES.**—

(1) **PURCHASE AUTHORITY.**—The Corporation (and affiliates) may purchase, hold, and sell any securities guaranteed under this section by the Corporation that represent interests in, or obligations backed by, pools of qualified loans. Securities issued under this section shall have maturities and bear rates of interest as determined by the Corporation.

(2) **ISSUANCE OF DEBT OBLIGATIONS.**—The Corporation (and affiliates) may issue debt obligations solely for the purpose of obtaining amounts for the purchase of any securities under paragraph (1), for the purchase of qualified loans (as defined in **[section 8.0(9)(B)] section 8.0(9)**), and for maintaining reasonable amounts for business operations (including adequate liquidity) relating to activities under this subsection.

\* \* \* \* \*

**[SEC. 8.7. RESERVES AND SUBORDINATED PARTICIPATION INTERESTS OF CERTIFIED FACILITIES.**

**[(a) CASH CONTRIBUTIONS.**—

**[(1) CONTRIBUTIONS BY ORIGINATORS.**—For each pool of loans, a certified facility and the participating originators may each contribute a share of the minimum reserve required under section 8.6(b)(2).

**[(2) COMPOSITION OF RESERVES.**—The reserves required under this section, other than retained subordinated participation interests, shall be held in the form of United States Treasury securities or other securities issued, guaranteed, or insured

by an agency or instrumentality of the United States Government.

[(3) USE AND DISPOSITION OF ASSETS IN RESERVE.—Subject to the requirements of subsection (c), any certified facility that establishes a reserve pursuant to this subsection shall be required by the Corporation to maintain such reserve as a segregated account consisting of the amounts contributed (but not the earnings accruing on such amounts) to ensure the repayment of principal of, and the payment of interest on, the securities representing an interest in, or obligations backed by, the pool of qualified loans with respect to which such reserve is established.

[(b) RETENTION OF SUBORDINATED PARTICIPATION INTERESTS.—

[(1) IN GENERAL.—A certified facility may meet the requirements of section 8.6(b)(2) with respect to any pool of qualified loans by retaining a subordinated participation interest in each loan included in each such pool in an amount not less than the amount that is equal to 10 percent of the principal amount of such loan.

[(2) RETENTION OF SUCH INTERESTS BY LOAN ORIGINATORS.—Under the terms of the sale of any qualified loan by the originator of such loan to a certified facility, the originator of such loan may agree to retain a subordinated participation interest in such loan and the amount of the subordinated interest so retained by such loan originator shall be attributed to the facility for purposes of determining whether the requirements of paragraph (1) have been met.

[(3) DISTRIBUTION RIGHTS OF HOLDERS OF SUBORDINATED INTERESTS.—The rights of the holders of the subordinated participation interests to receive distributions with respect to the loans constituting the pool shall be subordinated as prescribed by the Corporation to enhance the likelihood of regular receipt by the other holders of interests in such pool of the full amount of scheduled payments of principal and interest on loans constituting the pool.

[(c) ADDITIONAL REQUIREMENTS RELATING TO SECTION 8.6(b)(2) RESERVES.—

[(1) DISTRIBUTION OF EARNINGS ACCRUING IN SECTION 8.6(b)(2) RESERVES.—In the case of each applicable loan pool, a certified facility shall distribute to originators, at least semiannually, any earnings on the contributions of the originators to the reserve.

[(2) EXCEPTION FOR WITHDRAWALS THAT WOULD DECREASE RESERVE LEVELS BELOW RESERVE REQUIREMENT.—No withdrawal and distribution authorized under paragraph (1) may be made to the extent such withdrawal would cause the reserve to fall below the amount required to be held in such reserve under section 8.6(b)(2).

[(3) SEPARATE LOAN LOSS ACCOUNTING.—Any certified facility that maintains a reserve (pursuant to section 8.6(b)(2)) to which any originator has contributed shall maintain separate loan loss accounting for each loan for which a contribution was made by such originator to such reserve.

[(4) LOAN LOSS ATTRIBUTION RULE.—Except for that portion of losses absorbed by a contribution of a certified facility to the reserve as provided in subsection (a)(1), each originator participating in the pool shall absorb any losses on loans originated up to the total amount the originator has contributed to the reserve before the losses are absorbed by the contributions of other originators who are participating in the pool.]

[(d) AUTHORITY OF BOARD TO ESTABLISH OTHER POLICIES AND PROCEDURES.—The Board may establish such other policies and procedures with respect to—

[(1) the establishment of reserves and the retention of subordinated participation interests under this section; and

[(2) the manner in which such reserves or interests shall be available to make payments of interest on, and repayments of principal of, securities for which the Corporation has provided guarantees, as the Board determines to be necessary or appropriate to carry out the purposes of this title.]

**SEC. 8.8. STANDARDS FOR QUALIFIED LOANS.**

(a) \* \* \*

\* \* \* \* \*

(e) NONDISCRIMINATION REQUIREMENT.—The standards established under subsection (a) shall not discriminate against small originators or small agricultural mortgage loans that are at least \$50,000. *The Board shall promote and encourage the inclusion of qualified loans for small farms and family farmers in the agricultural mortgage secondary market.*

\* \* \* \* \*

**SEC. 8.11. SUPERVISION, EXAMINATION, AND REPORT OF CONDITION.**

(a) \* \* \*

\* \* \* \* \*

(e) DEFINITION OF AFFILIATE.—As used in this title, the term “affiliate” shall mean an entity effectively controlled or owned by the Corporation, except that such term shall not include [a certified facility or] an originator (as defined in [paragraphs (3) and (7), respectively, of section 8.0] *section 8.0(7)*).

\* \* \* \* \*

**SEC. 8.12. SECURITIES IN CREDIT ENHANCED POOLS.**

(a) \* \* \*

\* \* \* \* \*

[(d) STATE USURY LAWS SUPERSEDED.—Any provision of the constitution or law of any State which expressly limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by agricultural lenders or certified facilities shall not apply to any agricultural loan made by an originator or a certified facility in accordance with this title that is included in a pool for which the Corporation has provided a guarantee.]

(d) STATE USURY LAWS SUPERSEDED.—A provision of the constitution or law of any State shall not apply to an agricultural loan made by an originator or a certified facility in accordance with this

*title for sale to the Corporation or to a certified facility for inclusion in a pool for which the Corporation has provided, or has committed to provide, a guarantee, if the loan, not later than 180 days after the date the loan was made, is sold to the Corporation or included in a pool for which the Corporation has provided a guarantee, if the provision—*

*(1) limits the rate or amount of interest, discount points, finance charges, or other charges that may be charged, taken, received, or reserved by an agricultural lender or a certified facility; or*

*(2) limits or prohibits a prepayment penalty (either fixed or declining), yield maintenance, or make-whole payment that may be charged, taken, or received by an agricultural lender or a certified facility in connection with the full or partial payment of the principal amount due on a loan by a borrower in advance of the scheduled date for the payment under the terms of the loan, otherwise known as a prepayment of the loan principal.*

**SEC. 8.13. AUTHORITY TO ISSUE OBLIGATIONS TO COVER GUARANTEE LOSSES OF CORPORATION.**

(a) SALE OF OBLIGATIONS TO TREASURY.—

(1) IN GENERAL.—Subject to the limitations contained in [sections 8.6(b) and] section 8.10(c) and the requirement of paragraph (2), the Corporation may issue obligations to the Secretary of the Treasury the proceeds of which may be used by the Corporation solely for the purpose of fulfilling the obligations of the Corporation under any guarantee provided by the Corporation under this title.

(2) CERTIFICATION.—The Secretary of the Treasury may purchase obligations of the Corporation under paragraph (1) only if the Corporation certifies to the Secretary that—

(A) the requirements of [sections 8.6(b) and] section 8.10(c) have been fulfilled; and

(B) the proceeds of the sale of such obligations are needed to fulfill the obligations of the Corporation under any guarantee provided by the Corporation under this title.

\* \* \* \* \*

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

\* \* \* \* \*

**SEC. 8.32. RISK-BASED CAPITAL LEVELS.**

(a) RISK-BASED CAPITAL TEST.—[Not later than the expiration of the 2-year period beginning on December 13, 1991,] *Not sooner than the expiration of the 3-year period beginning on the date of the enactment of the Farmer Mac Reform Act of 1995,* the Director of the Office of Secondary Market Oversight shall, by regulation, establish a risk-based capital test under this section for the Corporation. When applied to the Corporation, the risk-based capital test shall determine the amount of regulatory capital for the Corporation that is sufficient for the Corporation to maintain positive cap-

ital during a 10-year period in which both of the following circumstances occur:

(1) \* \* \*

\* \* \* \* \*

(b) CONSIDERATIONS.—

(1) ESTABLISHMENT OF TEST.—In establishing the risk-based capital test under subsection (a)—

(A) \* \* \*

\* \* \* \* \*

(C) the Director [shall] *may* take into account retained subordinated participating interests under section 8.6(b)(2) (as in effect before the date of the enactment of the Farmer Mac Reform Act of 1995);

\* \* \* \* \*

(2) REVISING TEST.—Upon the expiration of the [5-year] 8-year period beginning on December 13, 1991, the Director shall examine the risk-based capital test under subsection (a) and may revise the test. In making examinations and revisions under this paragraph, the Director shall take into account that, before December 13, 1991, the Corporation has not issued guarantees for pools of qualified loans. To the extent that the revision of the risk-based capital test causes a change in the classification of the Corporation within the enforcement levels established under section 8.35, the Director shall waive the applicability of any additional enforcement actions available because of such change for a reasonable period of time, to permit the Corporation to increase the amount of regulatory capital of the Corporation accordingly.

\* \* \* \* \*

(d) SPECIFIED CONTENTS.—[The regulations establishing]

(1) *IN GENERAL.*—*The regulations establishing the risk-based capital test under this section [shall contain] shall—*

(A) *be issued by the Director for public comment in the form of a notice of proposed rulemaking, to be first published after the expiration of the period referred to in subsection (a); and*

(B) *contain specific requirements, definitions, methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, prepayment rates, and performance of pools of qualified loans). [The regulations shall]*

(2) *SPECIFICITY.*—*The regulations referred to in paragraph (1) shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.*

\* \* \* \* \*

**[SEC. 8.33. MINIMUM CAPITAL LEVEL.**

**[(a) IN GENERAL.—**Except as provided in subsection (b), for purposes of this subtitle, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of—

**[(1)** 2.50 percent of the aggregate on-balance sheet assets of the Corporation (other than assets referred to in paragraph (3)), as determined in accordance with generally accepted accounting principles;

**[(2)** 0.45 percent of the unpaid principal balance of outstanding securities guaranteed by the Corporation and backed by pools of qualified loans and substantially equivalent instruments issued or guaranteed by the Corporation, and other off-balance sheet obligations of the Corporation; and

**[(3)** the percentage of the aggregate assets of the Corporation acquired pursuant to the linked portfolio option under section 8.6(g) that is determined under subsection (c).

**[(b) 18-MONTH TRANSITION.—**During the 18-month period beginning upon the date of the enactment of this section, for purposes of this subtitle, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of—

**[(1)** 1.50 percent of the aggregate on-balance sheet assets of the Corporation (other than assets referred to in paragraph (3)), as determined in accordance with generally accepted accounting principles;

**[(2)** 0.40 percent of the unpaid principal balance of outstanding securities guaranteed by the Corporation and backed by pools of qualified loans and substantially equivalent instruments issued or guaranteed by the Corporation, and other off-balance sheet obligations of the Corporation; and

**[(3)** the percentage of the aggregate assets of the Corporation acquired pursuant to the linked portfolio option under section 8.6(g) that is determined under subsection (c).

**[(c) LINKED PORTFOLIO ASSETS.—**The percentage of any aggregate assets of the Corporation acquired pursuant to the linked portfolio option under section 8.6(g) that is referred to in subsections (a)(3) and (b)(3) of this section (and in section 8.34(3)(A)) shall be—

**[(1)** during the 5-year period beginning on the date of the enactment of this section—

**[(A)** 0.45 percent of any such assets not exceeding \$1,000,000,000;

**[(B)** 0.75 percent of any such assets in excess of \$1,000,000,000 but not exceeding \$2,000,000,000;

**[(C)** 1.00 percent of any such assets in excess of \$2,000,000,000 but not exceeding \$3,000,000,000;

**[(D)** 1.25 percent of any such assets in excess of \$3,000,000,000 but not exceeding \$4,000,000,000;

**[(E)** 1.50 percent of any such assets in excess of \$4,000,000,000 but not exceeding \$5,000,000,000; and

**[(F)** 2.50 percent of any such assets in excess of \$5,000,000,000; and

**[(2)** after the expiration of such 5-year period, 2.50 percent of any such aggregate assets.

**[SEC. 8.34. CRITICAL CAPITAL LEVEL.**

**[For purposes of this subtitle, the critical capital level for the Corporation shall be an amount of core capital equal to the sum of—**

**[(1) 1.25 percent of the aggregate on-balance sheet assets of the Corporation (other than assets referred to in paragraph (3)), as determined in accordance with generally accepted accounting principles;**

**[(2) 0.25 percent of the unpaid principal balance of outstanding securities guaranteed by the Corporation and backed by pools of qualified loans and substantially equivalent instruments issued or guaranteed by the Corporation, and other off-balance sheet obligations of the Corporation; and**

**[(3) a percentage of any aggregate assets of the Corporation acquired pursuant to the linked portfolio option under section 8.6(g), which shall be—**

**[(A) during the 5-year period beginning on the date of the enactment of this section, one-half of the percentage that is determined under section 8.33(c)(1); and**

**[(B) after the expiration of such 5-year period, 1.25 percent of any such aggregate assets.]**

**SEC. 8.33. MINIMUM CAPITAL LEVEL.**

*(a) IN GENERAL.—Except as provided in subsection (b), for purposes of this subtitle, the minimum capital level for the Corporation shall be an amount of core capital equal to the sum of—*

*(1) 2.75 percent of the aggregate on-balance sheet assets of the Corporation, as determined in accordance with generally accepted accounting principles; and*

*(2) 0.75 percent of the Corporation's aggregate off-balance sheet obligations, which, for the purposes of this subtitle, shall include—*

*(A) the unpaid principal balance of outstanding securities that are guaranteed by the Corporation and backed by pools of qualified loans;*

*(B) instruments that are issued or guaranteed by the Corporation and are substantially equivalent to instruments described in subparagraph (A); and*

*(C) other off-balance sheet obligations of the Corporation.*

*(b) TRANSITION PERIOD.—*

*(1) IN GENERAL.—For purposes of this subtitle, the minimum capital level for the Corporation—*

*(A) prior to January 1, 1997, shall be the amount of core capital equal to the sum of—*

*(i) 0.45 percent of aggregate off-balance sheet obligations;*

*(ii) 0.45 percent of designated on-balance sheet assets as determined under paragraph (2); and*

*(iii) 2.50 percent of on-balance sheet assets other than designated assets;*

*(B) during the 1-year period ending December 31, 1997, shall be the amount of core capital equal to the sum of—*

*(i) 0.55 percent of aggregate off-balance sheet obligations;*

- (ii) 1.20 percent of designated on-balance sheet assets as determined under paragraph (2); and
  - (iii) 2.55 percent of on-balance sheet assets other than designated assets;
- (C) during the 1-year period ending December 31, 1998, shall be the amount of core capital equal to—
- (i) the sum of—
    - (I) 0.65 percent of aggregate off-balance sheet obligations;
    - (II) 1.95 percent of designated on-balance sheet assets as determined under paragraph (2); and
    - (III) 2.65 percent of on-balance sheet assets other than designated assets; or
  - (ii) if the Corporation's core capital is less than \$25,000,000 on January 1, 1998, the amount determined under subsection (a); and
  - (D) on and after January 1, 1999, shall be the amount determined under subsection (a).

(2) DEFINITION OF DESIGNATED ON-BALANCE SHEET ASSETS.— In this subsection, the term “designated on-balance sheet assets” means the sum of—

- (A) the aggregate on-balance sheet assets of the Corporation acquired under section 8.6(e); and
- (B) the aggregate amount of qualified loans purchased and held by the Corporation under section 8.3(c)(13).

**SEC. 8.34. CRITICAL CAPITAL LEVEL.**

For purposes of this subtitle, the critical capital level for the Corporation shall be an amount of core capital equal to 50 percent of the total minimum capital amount determined under section 8.33.

**SEC. 8.35. ENFORCEMENT LEVELS.**

(a) \* \* \*

\* \* \* \* \*

(e) IMPLEMENTATION.—Notwithstanding paragraphs (1) and (2) of subsection (a), [during the 30-month period beginning on the date of the enactment of this section,] during the period beginning on December 13, 1991, and ending on the effective date of the risk-based capital regulation issued by the Director under section 8.32, the Corporation shall be classified as within level I if the Corporation equals or exceeds the minimum capital level established under section 8.33.

\* \* \* \* \*

**SEC. 8.38. RECAPITALIZATION OF THE CORPORATION.**

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

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

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

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

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

### **Subtitle C—Receivership; Conservatorship; Liquidation of the Federal Agricultural Mortgage Corporation**

#### **SEC. 8.41. CONSERVATORSHIP; LIQUIDATION; RECEIVERSHIP.**

(a) *VOLUNTARY LIQUIDATION.*—The Corporation may voluntarily liquidate only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board.

(b) *INVOLUNTARY LIQUIDATION.*—The Farm Credit Administration Board may appoint a conservator or receiver for the Corporation under the circumstances specified in section 4.12(b). The grounds for appointment of a conservator for the Corporation shall be in addition to those enumerated in section 8.37. In applying section 4.12(b) to the Corporation—

(1) the Corporation shall also be considered insolvent if the Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(2) a conservator may also be appointed for the Corporation if the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; and

(3) a receiver may also be appointed for the Corporation if—  
(A)(i) the authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

(ii) the Corporation is classified under section 8.35 as within level III or IV, and the alternative actions available under subtitle B are not satisfactory; and

(B) the Farm Credit Administration determines that the appointment of a conservator would not be appropriate.

(c) *APPOINTMENT OF CONSERVATOR OR RECEIVER.*—

(1) *QUALIFICATIONS.*—Notwithstanding section 4.12(b), if a conservator or receiver is appointed for the Corporation, the conservator or receiver shall be—

(A) the Farm Credit Administration or any other governmental entity or employee, including the Farm Credit System Insurance Corporation; or

(B) any person that—

(i) has no claim against, or financial interest in, the Corporation or other basis for a conflict of interest as the conservator or receiver; and

(ii) has the financial and management expertise necessary to direct the operations and affairs of and, if necessary, to liquidate the Corporation.

(2) *COMPENSATION.*—A conservator or receiver for the Corporation and professional personnel (other than Federal employees) employed to represent or assist the conservator or receiver may be compensated for activities conducted as, or for, a conservator or receiver. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Farm Credit Administration may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Farm Credit Administration determines that compensation at higher rates is necessary in order to recruit and retain competent personnel. The conservator or receiver may contract with any governmental entity, including the Farm Credit System Insurance Corporation, to make personnel, services, and facilities of the entity available to the conservator or receiver upon such terms and compensation arrangements as shall be mutually agreed, and each entity is hereby authorized to provide the same to the conservator or receiver.

(3) *EXPENSES.*—The conservator or receiver shall pay valid claims for expenses of the conservatorship or receivership (including compensation pursuant to paragraph (2)) and valid claims with respect to any loan made under subsection (f) before paying any other valid claim against the Corporation, and such claims may be secured by a lien on such property of the Corporation as the conservator or receiver may determine, which lien shall have priority over any other lien.

(4) *LIABILITY.*—If the conservator or receiver for the Corporation is not a Federal entity, or an officer or employee of the Federal Government, the conservator or receiver shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the conservatorship or receivership, unless such acts or omissions constitute gross negligence or any form of intentional tortious conduct or criminal conduct.

(5) *INDEMNIFICATION.*—The Farm Credit Administration may indemnify the conservator or receiver on such terms as the Farm Credit Administration considers appropriate.

(d) *JUDICIAL REVIEW OF APPOINTMENT.*—Notwithstanding subsection (i)(1), within 30 days after a conservator or receiver is appointed pursuant to subsection (b), the Corporation may bring an action in the United States District Court for the District of Columbia for an order requiring the Farm Credit Administration Board to remove the conservator or receiver, and the court shall, on the merits, dismiss such action or direct the Farm Credit Administration Board to remove the conservator or receiver. On the commencement of such an action, any court having jurisdiction of any other action or enforcement proceeding authorized under this Act to which

the Corporation is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(e) *GENERAL POWERS OF CONSERVATOR OR RECEIVER.*—The conservator or receiver for the Corporation shall have such powers to conduct the conservatorship or receivership as shall be provided pursuant to regulations adopted by the Farm Credit Administration Board. Such powers shall be comparable to the powers available to a conservator or receiver appointed pursuant to section 4.12(b).

(f) *BORROWINGS FOR WORKING CAPITAL.*—If the conservator or receiver of the Corporation determines it is likely that there will be insufficient funds to pay the ongoing administrative expenses of the conservatorship or receivership or that there will be insufficient liquidity to fund maturing obligations of the conservatorship or receivership, the conservator or receiver may borrow funds in such amounts, from such sources, and at such rates of interest as the conservator or receiver deems necessary or appropriate to meet the administrative expenses or liquidity needs of the conservatorship or receivership. The Farm Credit Banks are hereby authorized to loan funds to the conservator or receiver, and to purchase assets of the Corporation, for such purpose.

(g) *AGREEMENTS AGAINST INTERESTS OF CONSERVATOR OR RECEIVER.*—No agreement which tends to diminish or defeat the right, title, or interest of the conservator or receiver for the Corporation in any asset acquired by it as conservator or receiver for the Corporation shall be valid against the conservator or receiver unless the agreement—

(1) is in writing;

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

(3) is approved by the Board or an appropriate committee of the Board, which approval shall be reflected in the minutes of the Board or committee; and

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

(h) *REPORT TO THE CONGRESS.*—Upon a determination by the receiver for the Corporation that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the financial condition of the receivership.

(i) *TERMINATION OF AUTHORITIES.*—

(1) *CORPORATION.*—The charter of the Corporation is canceled, and the authority provided to the Corporation by this title shall terminate, at such date as the Farm Credit Administration Board determines is appropriate, following the placement of the Corporation in receivership but not later than the conclusion of the receivership and discharge of the receiver.

(2) *OVERSIGHT.*—The Office of Secondary Market Oversight established pursuant to section 8.11 is abolished, and section 8.11(a) and subtitle B shall have no force or effect, at such date

*as the Farm Credit Administration Board determines is appropriate, following the placement of the Corporation in receivership but not later than the conclusion of the receivership and discharge of the receiver.*

DISSENTING VIEWS OF THE HONORABLE JOHN N.  
HOSTETTLER

My opposition to H.R. 2130 does not have to do with the intentions of the bill, which are obviously good. My concern lies with the idea that another agricultural credit program is needed at all.

I am unconvinced—from discussion with both farmers and bankers in my district and experts in the policy area—that there is a significant demand for additional government supported portfolio lenders to the market for long term, fixed rate agricultural loans.

During testimony at the December 7, 1995 Subcommittee on Resource Conservation, Research and Forestry hearing, I did not hear a very spirited defense for the concept that more than one Government Sponsored Enterprise in this admittedly slow-growing market is needed. In fact, even supporters of the program acknowledged that Farmer Mac may never be a much-utilized tool.

I champion the idea of making the federal government smaller. This situation cries out for downsizing. Farmer Mac is receiving little or no attention from the financial world while farmers are finding quality credit availability to be adequate. Therefore, the feeling that something should be done to make Farmer Mac more attractive is not consistent with the feeling of the electorate. It is an idea, I fear, borne of an attitude that more programs mean better government.

This having been said, I also have concerns about the means by which the bill attempts to attract more interest for the financial world to Farmer Mac. By waiving the 10 percent insurance requirement for poolers, the secondary transactions would then subject the U.S. Treasury, and hence, the taxpayer, to much more risk. Considering our current fiscal status, and the aforementioned questionable (at best) value of the program, this seems to be a particularly troublesome course of action.

For this reason, the provision in the bill that grants authority to dissolve Farmer Mac should it continue to draw little attention in ineffective, I do not doubt that poolers will be attracted by the removal of the 10 percent requirement. Liquidation of the program is the answer to the current problem with Farmer Mac. The solution proposed by the bill will replace one problem (inactivity) with another (increased risk to taxpayers), thus rendering the liquidation provision obsolete.

This is why I voted no (by voice) in the committee markup. I look forward to working with my colleagues on the committee in search of quality answers to the questions facing the U.S. agriculture sector and this nation's taxpayers.

JOHN N. HOSTETTLER.

○