

subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(15) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the institution or receiver.

(16) Pay, out of the assets of the institution, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(17) Pay out of the assets of the institution all approved claims of indebtedness in accordance with priorities established in this subpart.

(18) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(19) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes by order or by amendment of any order or by regulation.

(c) *Authority to pay claims.* The receiver of a bank is also empowered to pay claims of holders of notes, bonds, debentures, or other obligations issued by the bank under 12 U.S.C. 2153(c) or (d) in accordance with procedures specified by the Insurance Corporation pursuant to § 627.2740(d) of this part.

§ 627.2726 Treatment by the conservator or receiver of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

Beneficial interest means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

Financial asset means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

Participation means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the “lead”, to a buyer,

known as the “participant”, without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant’s interest or to otherwise compensate the participant due to a default on the underlying obligation.

Securitization means the issuance by a special purpose entity of beneficial interests:

(1) The most senior class of which at the time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations, or

(2) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933 (15 U.S.C. 77d), as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

Special purpose entity means a trust, corporation, or other entity demonstrably distinct from the Farm Credit institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The receiver shall not, by exercise of its authority to repudiate contracts under § 627.2725(b)(2) and (b)(14), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a Farm Credit institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the “legal isolation” condition as it applies to institutions for which the

Farm Credit Administration

§ 627.2740

FCSIC may be appointed as receiver which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the Farm Credit institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the receiver to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the institution in receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the receiver to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the receiver regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The receiver shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a Farm Credit institution solely because such agreement does not meet the "contemporaneous" requirement of section 5.61(d) of the Act.

(g) This section may be repealed or amended by the Farm Credit Administration, but any such repeal or amendment shall not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or modification.

[70 FR 55515, Sept. 22, 2005]

§ 627.2730 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the institution, no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership shall be issued, allocated, retired, sold, distributed, transferred,

assigned, or applied against any indebtedness of the owners of such equities.

(b) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

[57 FR 46482, Oct. 9, 1992, as amended at 63 FR 5724, Feb. 4, 1998]

§ 627.2735 Notice to holders of uninsured accounts and stockholders.

(a) Upon the placing of an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) as described in § 614.4513 of this chapter that the funds ceased earning interest when the receivership was instituted and will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

(b) As soon as practicable after the receiver takes possession of the institution, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) That the stock and other equities of the institution may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the owners of such equities; and

(3) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 627.2740 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the institution, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the institution's books at the creditor's last address appearing thereon. Claims filed after the specified date