

STATE INSURANCE REGULATION PRESERVATION ACT

SEPTEMBER 12, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 5059]

The Committee on Financial Services, to whom was referred the bill (H.R. 5059) to amend the Home Owners' Loan Act with respect to the registration and supervision of insurance savings and loan holding companies, and for other purposes, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “State Insurance Regulation Preservation Act”.

SEC. 2. SUPERVISION OF INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.

(a) DEFINITIONS.—Section 10(a)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)) is amended by inserting at the end the following:

“(K) BUSINESS OF INSURANCE.—The term ‘business of insurance’ means any activity that is regulated in accordance with the relevant State insurance law, including the writing of insurance and the reinsuring of risks.

“(L) INSURANCE SAVINGS AND LOAN HOLDING COMPANY.—The term ‘insurance savings and loan holding company’ means—

“(i) a savings and loan holding company with 75 percent or more of its total consolidated assets in an insurance underwriting company (or insurance underwriting companies), other than assets associated with insurance for credit risk, during the 4 most recent consecutive quarters, as calculated in accordance with Generally Accepted Accounting Principles or the Statutory Accounting Principles in accordance with State law;

“(ii) a company that—

“(I) was a savings and loan holding company as of July 21, 2010, and through date of enactment of this clause; and

“(II) was not subject to the Basel III capital regulation promulgated by the Board of Governors of the Federal Reserve System and the Comptroller of the Currency on October 11, 2013 (78 Fed. Reg. 62018), because the savings and loan holding company held 25 percent or more of its total consolidated assets in subsidiaries

that are insurance underwriting companies (other than assets associated with insurance for credit risk); or

“(iii) a top-tier savings and loan holding company that—

“(I) was registered as a savings and loan holding company before July 21, 2010; and

“(II) is a New York not-for-profit corporation formed for the purpose of holding the stock of a New York insurance company.

“(M) INSURANCE UNDERWRITING COMPANY.—The term ‘insurance underwriting company’ means an entity that is subject to regulation by a State insurance authority.

“(N) STATE INSURANCE AUTHORITY.—The term ‘State insurance authority’ means the chief insurance regulatory authority of a State.

“(O) TOP-TIER SAVINGS AND LOAN HOLDING COMPANY.—The term ‘top-tier savings and loan holding company’ means the ultimate parent company in a savings and loan holding company structure.”.

(b) REGISTRATION.—Section 10(b)(1) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(1)) is amended by inserting at the end the following new sentence: “A savings and loan holding company that is an insurance savings and loan holding company shall register as an insurance savings and loan holding company.”.

(c) REPORTS.—Section 10(b)(2) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(2)) is amended by adding at the end the following new subparagraph:

“(D) INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.—The Board, to the fullest extent possible, shall request reports and other information filed by insurance savings and loan holding companies with other Federal or State authorities from such other authorities before requesting such reports or information from insurance savings and loan holding companies.”.

(d) BOOKS AND RECORDS.—Section 10(b)(3) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(3)) is amended—

(1) by striking “Each” and inserting the following:

“(A) IN GENERAL.—Each”; and

(2) by inserting at the end the following new subparagraph:

“(B) INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.—The Board, to the fullest extent possible, shall align any prescribed recordkeeping requirements for insurance savings and loan holding companies with the record-keeping requirements imposed by State insurance authorities.”.

(e) EXAMINATIONS.—Section 10(b)(4)(C) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(4)(C)) is amended—

(1) in clause (i), by striking the word “and” at the end;

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

(3) by adding at the end the following new clause:

“(iii) INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.—

“(I) COORDINATION.—The Board, to the fullest extent possible, shall conduct examinations of insurance savings and loan holding companies in conjunction with other State and Federal authorities in order to minimize the potential for duplication and conflict between the inspections conducted by the Board and the examinations conducted by other State and Federal authorities.

“(II) SCOPE AND FREQUENCY.—Following public notice and comment, the Board shall establish a schedule for the frequency and the scope of examinations of insurance savings and loan holding companies that is consistent with the supervisory framework required by paragraph (7).”.

(f) SUPERVISION.—Section 10(b) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)) is amended by inserting at the end the following new paragraph:

“(7) INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.—

“(A) TAILORED SUPERVISION.—The Board, by rule, shall establish a supervisory framework for insurance savings and loan holding companies that—

“(i) is tailored to the unique risks, operations, and activities of insurance savings and loan holding companies; and

“(ii) to the fullest extent possible, and consistent with the safe and sound operation of insurance savings and loan holding companies, does not unnecessarily duplicate the supervision of insurance underwriting companies by State insurance authorities.

“(B) REVIEW OF SUPERVISORY GUIDANCE.—Following public notice and comment, the Board shall review and revise supervisory policy letters and guidance applicable to insurance savings and loan holding companies to ensure that such letters and guidance are not inconsistent with the supervisory framework required by this paragraph.”.

SEC. 3. ASSESSMENTS AND FEES FOR INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.

Section 11(s) of the Federal Reserve Act (12 U.S.C. 248(s)), which relates to assessments and fees, is amended by inserting at the end the following new paragraph:

“(4) EXCLUDED ASSETS.—For purposes of paragraph (2)(B), the total consolidated assets of an insurance savings and loan holding company, as defined in section 10(a)(1)(L) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)(1)(L)), shall not include assets attributable to the business of insurance conducted by such company or any affiliate of such company, other than assets associated with insurance for credit risk.”.

SEC. 4. IMPLEMENTATION.

(a) IMPLEMENTATION OF SUPERVISORY FRAMEWORK.—The Board shall establish the supervisory framework required by section 10(b)(7) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(7)), as added by this Act, within 24 months of the date of enactment of this Act.

(b) REVIEW OF SUPERVISORY GUIDANCE.—The Board shall complete the review of supervisory policy letters and policy guidance required by section 10(b)(7) of the Home Owners’ Loan Act (12 U.S.C. 1467a(b)(7)), as added by this Act, within 30 months of the date of enactment of this Act.

(c) REPORT TO CONGRESS.—The Board, no later than 36 months after the date of enactment of this Act, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the implementation of this Act.

(d) BOARD DEFINED.—As used in this section, the term “Board” means the Board of Governors of the Federal Reserve System.

SEC. 5. RELATIONSHIP TO OTHER LAWS.

This Act and the amendments made by this Act shall not limit any authority over insurance savings and loan holding companies (as defined under section 10(a)(1) of the Home Owners’ Loan Act) that is provided by a Federal law other than this Act.

PURPOSE AND SUMMARY

On February 15, 2018, Rep. Keith Rothfus introduced H.R. 5059, the “State Insurance Regulatory Preservation Act”, which amends the Home Owners’ Loan Act (Pub. L. No. 73–43) to create a definition for Insurance Savings and Loan Holding Companies (ISLHCs). The legislation would establish a regulatory framework that tailors an examination regime for these ISLHCs and limits the Board of Governors of the Federal Reserve System’s (Federal Reserve) oversight of such companies so as not to duplicate the examinations of other Federal or state authorities.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 5059 is to create a definition for Insurance Savings and Loan Holding Companies (ISLHCs) that establishes a regulatory framework that tailors an examination regime for these ISLHCs and limits the Federal Reserve’s oversight of such companies so as not to duplicate the examinations of other Federal or state authorities.

ISLHCs are insurance companies that operate savings and loan associations (S&Ls), also known as thrifts. Many ISLHCs use their thrift subsidiaries to provide a more extensive suite of products to their customers.

Despite the fact that the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111–203) (herein referred as the “Dodd-Frank Act”) reaffirmed the state-based model of insurance regulation, the bill also brought ISLHCs under the Federal Reserve’s supervision for the first time. In Title III of the Dodd-Frank Act, the Federal Reserve was given all supervisory and rule-making authority over insurance companies that are organized as

ISLHCs, which continue to own depository institutions. Several insurers divested their banking operations and their SLHC charters after the enactment of the Dodd-Frank Act.

The Federal Reserve’s power as the default ISLHC regulator spans the entire holding company structure including any subsidiary (insurance and non-insurance subsidiaries alike), other than a depository institution, which is regulated by the Office of the Comptroller of the Currency (OCC). The Dodd-Frank Act established the Federal Reserve as the ISLHC’s consolidated prudential regulator and day-to-day supervisor with the power to set capital standards and other prudential requirements, such as administering stress tests. Federal Reserve supervision is in addition to the business of insurance regulation by the state insurance commissioners and regulation of thrift subsidiaries by the OCC. However, according to the testimony received from Kurt Bock from COUNTRY Financial, “the Federal Reserve has continuously strived to fit insurance groups with depository institutions into its bank holding company regulatory system” and the Federal Reserve has had “to consider how to balance the conflicting pressures of banking regulation—focused on macro-economic stability, holding company source of strength for depositors and federal deposit insurance fund protection—with a completely different insurance business model that does not contribute to systemic risk and is focused on legal entity regulation for consumer protection.”

H.R. 5059 follows on legislation enacted into law during the 113th Congress, the “Insurance Capital Standards Clarification Act of 2014” (Pub. L. No. 113–279), which provides that, in establishing the minimum leverage and risk-based capital requirements mandated by Section 171 of the Dodd-Frank Act, the Federal Reserve is not required to include (including in any determination of consolidation) entities regulated by a state or foreign insurance regulator to the extent such entities act in their capacity as regulated insurance entities.

The Federal Reserve’s supervision of ISLHCs should complement, rather than supplant, state regulation. Unfortunately, the Dodd-Frank Act’s lack of clarity about the Federal Reserve’s authority has led to regulatory inefficiency, duplication of effort, and higher compliance costs. H.R. 5059 ensures that ISLHCs that meet both state and federal capital standards are supervised day-to-day by their state regulators by right-sizing federal regulation of savings and loan holding companies with insurance entities. As Nationwide noted at the March 7, 2018, Subcommittee hearing to consider the legislation that the Federal Reserve “has not appropriately tailored its supervisory framework for these institutions to account for the fact that they are already subject to extensive group-wide supervision by the state insurance departments.”

H.R. 5059 also clarifies that state regulators should assume the lead on the day-to-day supervision of these insurance companies. The OCC will retain supervisory authority over thrift subsidiaries. The Federal Reserve will retain authority to tailor the supervision of ISLHCs to the unique risks, operations, and activities of companies and to ensure that, consistent with safety and soundness, the supervision of ISLHCs does not unnecessarily duplicate or conflict with the supervision of such companies by State insurance authorities.

H.R. 5059 provides for a complementary relationship between insurance companies, their state regulators, the OCC, and the Federal Reserve, which would reduce regulatory inefficiency, duplication of effort, and unnecessarily higher compliance costs by utilizing proven effective state-based insurance regulation.

HEARINGS

The Committee on Financial Services, Housing and Insurance Subcommittee, held a hearing examining matters relating to H.R. 5059 on March 7, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 24, 2018, and ordered H.R. 5059 to be reported favorably to the House as amended by voice vote, a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Mr. Rothfus by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There are no record votes.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974. In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 5059 will not establish any new budget or entitlement authority or create any tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

However, in issuing any regulation, order, or supervisory guidance applicable to an insurance savings and loan holding company, including a regulation, order, or guidance related to capital, stress testing, and cybersecurity, the legislation requires the Board of Governors of the Federal Reserve System to tailor such regulation,

order, or guidance to the risks and activities of the business of insurance and shall consult with State insurance authorities to ensure that the regulation, order, or guidance does not duplicate or conflict with State insurance requirements.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section titles the bill as the “State Insurance Regulatory Preservation Act.”

Section 2. Supervision of insurance savings and loan holding companies

Section 2 amends section 10 of HOLA to provide for the registration of insurance savings and loan holding companies and for the tailoring of the supervision of such companies in order to minimize the potential for overlap and conflict with the supervision of such companies by State insurance authorities.

Subsection (a) amends section 10 of HOLA to insert several new definitions in HOLA related to the provisions of the State Insurance Regulation Preservation Act. These definitions include: (1) a definition of the “business of insurance,” that reflects input from the Federal Reserve Board; (2) a definition of an “insurance savings and loan holding company,” which identifies the savings and loan holding companies subject to the provisions of the State Insurance Regulation Preservation Act; (3) a definition of an “insurance underwriting company;” (4) a definition of the term “State insurance authority;” and (5) a definition of the term “top-tier savings and loan holding company.”

Subsection (b) amends section 10 of HOLA to require a savings and loan holding company that meets the definition of an insurance savings and loan holding company to register with the Federal Reserve Board as an insurance savings and loan holding company.

Subsection (c) amends section 10 of HOLA to modify reporting requirements for a savings and loan holding company that is registered as an insurance savings and loan holding company. The subsection provides that in the event an insurance savings and loan holding company has filed a report or other information with another Federal or State authority, the Federal Reserve Board must request that report or information from the other authority before requesting the report of information from the company.

Subsection (d) amends section 10 of HOLA to require that any recordkeeping requirements imposed by the Federal Reserve Board on a savings and loan holding company that is registered as an insurance savings and loan holding company must be aligned with the recordkeeping requirements imposed on the company by State insurance authorities. This provision avoids a potential conflict between recordkeeping requirements imposed by the Board on an insurance savings and loan holding company and those imposed by a State insurance authority.

Subsection (e) amends section 10 of HOLA to require that examinations of registered insurance savings and loan holding companies that are conducted by the Federal Reserve Board be conducted, to the fullest extent possible, in conjunction with other State and federal authorities. This provision is intended to minimize the poten-

tial for duplication and conflict in examinations of insurance savings and loan holding companies. The subsection also requires the Federal Reserve Board to establish a schedule for conducting examinations of insurance savings and loan holding companies that is tailored to the unique risks, operations, and activities of registered insurance savings and loan holding companies and that does not duplicate or conflict with the supervision of such companies by State insurance authorities.

Subsection (f) amends section 10 of HOLA to require the Federal Reserve Board to tailor the supervision of registered insurance savings and loan holding companies to the unique risks, operations, and activities of companies and to ensure that, consistent with safety and soundness, the supervision of registered insurance savings and loan holding companies does not unnecessarily duplicate or conflict with the supervision of such companies by State insurance authorities. This subsection also directs the Federal Reserve Board to review existing supervisory guidance applicable to insurance savings and loan holding companies and ensure that such guidance is appropriately tailored to the unique risks, operations, and activities of companies and does not duplicate or conflict with the supervision of such companies by State insurance authorities.

Section 3. Assessments and fees for insurance savings and loan holding companies

Section 3 amends section 11 of the Federal Reserve Act (Pub. L. No. 63–43) to address the methodology for calculating the assessments the Federal Reserve Board charges an insurance savings and loan holding company for supervision. The subsection provides that the assessment be based upon the company’s non-insurance assets, since the company’s insurance assets are otherwise subject to supervision by State insurance authorities.

Section 4. State regulation of the business of insurance

Section 4 reaffirms federal policy granting States primary authority over the business of insurance that was established in the McCarran-Ferguson Act of 1945 (Pub. L. No. 79–15).

Section 5. Implementation

Section 5 establishes a schedule for implementing the provisions of the State Insurance Regulation Preservation Act.

Subsection (a) directs the Federal Reserve Board to implement the tailored supervision of insurance savings and loan holding companies within 24 months of the date of enactment of the State Insurance Regulation Preservation Act.

Subsection (b) directs the Federal Reserve Board to complete the review of supervisory guidance applicable to insurance savings and loan holding companies within 30 months of the date of enactment.

Subsection (c) directs the Federal Reserve Board to report to Congress on the implementation of the State Insurance Regulation Preservation Act within 36 months of the date of enactment.

Subsection (d) provides that the term “Board”, as it is used in the subsection means the Board of Governors of the Federal Reserve System.

Section 6. Relationship to other laws

Section 6 stipulates that the Act does not limit any authority over insurance savings and loan holding companies that is provided by federal law other than the Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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, and existing law in which no change is proposed is shown in roman):

HOME OWNERS' LOAN ACT

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SEC. 10. REGULATION OF HOLDING COMPANIES.

(a) DEFINITIONS.—

(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

(A) SAVINGS ASSOCIATION.—The term “savings association” includes a savings bank or cooperative bank which is deemed by the appropriate Federal banking agency to be a savings association under subsection (1).

(B) UNINSURED INSTITUTION.—The term “uninsured institution” means any depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(C) COMPANY.—The term “company” means any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, any Federal home loan bank, or any company the majority of the shares of which is owned by the United States or any State, or by an instrumentality of the United States or any State.

(D) SAVINGS AND LOAN HOLDING COMPANY.—

(i) IN GENERAL.—Except as provided in clause (ii), the term “savings and loan holding company” means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company.

(ii) EXCLUSION.—The term “savings and loan holding company” does not include—

(I) a bank holding company that is registered under, and subject to, the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 et seq.), or to any company directly or indirectly controlled by such company (other than a savings association);

(II) a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); or

(III) a company described in subsection (c)(9)(C) solely by virtue of such company's control of an intermediate holding company established pursuant to section 10A.

(E) MULTIPLE SAVINGS AND LOAN HOLDING COMPANY.—The term “multiple savings and loan holding company” means any savings and loan holding company which directly or indirectly controls 2 or more savings associations.

(F) DIVERSIFIED SAVINGS AND LOAN HOLDING COMPANY.—The term “diversified savings and loan holding company” means any savings and loan holding company whose subsidiary savings association and related activities as permitted under paragraph (2) of subsection (c) of this section represented, on either an actual or a pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year, as determined in accordance with regulations issued by the appropriate Federal banking agency.

(G) SUBSIDIARY.—The term “subsidiary” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(H) AFFILIATE.—The term “affiliate” of a savings association means any person which controls, is controlled by, or is under common control with, such savings association.

(I) BANK HOLDING COMPANY.—The terms “bank holding company” and “bank” have the meanings given to such terms in section 2 of the Bank Holding Company Act of 1956.

(J) ACQUIRE.—The term “acquire” has the meaning given to such term in section 13(f)(8) of the Federal Deposit Insurance Act.

(K) BUSINESS OF INSURANCE.—*The term “business of insurance” means any activity that is regulated in accordance with the relevant State insurance law, including the writing of insurance and the reinsuring of risks.*

(L) INSURANCE SAVINGS AND LOAN HOLDING COMPANY.—The term “insurance savings and loan holding company” means—

(i) a savings and loan holding company with 75 percent or more of its total consolidated assets in an insurance underwriting company (or insurance underwriting companies), other than assets associated with insurance for credit risk, during the 4 most recent consecutive quarters, as calculated in accordance with Generally Accepted Accounting Principles or the Statu-

tory Accounting Principles in accordance with State law;

(ii) a company that—

(I) was a savings and loan holding company as of July 21, 2010, and through date of enactment of this clause; and

(II) was not subject to the Basel III capital regulation promulgated by the Board of Governors of the Federal Reserve System and the Comptroller of the Currency on October 11, 2013 (78 Fed. Reg. 62018), because the savings and loan holding company held 25 percent or more of its total consolidated assets in subsidiaries that are insurance underwriting companies (other than assets associated with insurance for credit risk); or

(iii) a top-tier savings and loan holding company that—

(I) was registered as a savings and loan holding company before July 21, 2010; and

(II) is a New York not-for-profit corporation formed for the purpose of holding the stock of a New York insurance company.

(M) INSURANCE UNDERWRITING COMPANY.—The term “insurance underwriting company” means an entity that is subject to regulation by a State insurance authority.

(N) STATE INSURANCE AUTHORITY.—The term “State insurance authority” means the chief insurance regulatory authority of a State.

(O) TOP-TIER SAVINGS AND LOAN HOLDING COMPANY.—The term “top-tier savings and loan holding company” means the ultimate parent company in a savings and loan holding company structure.

(2) CONTROL.—For purposes of this section, a person shall be deemed to have control of—

(A) a savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(B) any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(C) a trust if the person is a trustee thereof; or

(D) a savings association or any other company if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exer-

cises a controlling influence over the management or policies of such association or other company.

(3) EXCLUSIONS.—Notwithstanding any other provision of this subsection, the term “savings and loan holding company” does not include—

(A) any company by virtue of its ownership or control of voting shares of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Board) as will permit the sale thereof on a reasonable basis; and

(B) any trust (other than a pension, profit-sharing, shareholders’, voting, or business trust) which controls a savings association or a savings and loan holding company if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and is (i) in existence on June 26, 1967, or (ii) a testamentary trust created on or after June 26, 1967.

(4) SPECIAL RULE RELATING TO QUALIFIED STOCK ISSUANCE.—

No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if such purchase is approved by the Board under subsection (q)(1)(D), unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) REGISTRATION AND EXAMINATION.—

(1) IN GENERAL.—Within 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Board on forms prescribed by the Board, which shall include such information, under oath or otherwise, with respect to the financial condition, ownership, operations, management, and intercompany relationships of such holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry out the purposes of this section. Upon application, the Board may extend the time within which a savings and loan holding company shall register and file the requisite information. *A savings and loan holding company that is an insurance savings and loan holding company shall register as an insurance savings and loan holding company.*

(2) REPORTS.—

(A) IN GENERAL.—Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Board, such reports as may be required by the Board. Such reports shall be made under oath or otherwise, and shall be in such form and for such

periods, as the Board may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.

(B) **USE OF EXISTING REPORTS AND OTHER SUPERVISORY INFORMATION.**—The Board shall, to the fullest extent possible, use—

- (i) reports and other supervisory information that the savings and loan holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;
- (ii) externally audited financial statements of the savings and loan holding company or subsidiary;
- (iii) information that is otherwise available from Federal or State regulatory agencies; and
- (iv) information that is otherwise required to be reported publicly.

(C) **AVAILABILITY.**—Upon the request of the Board, a savings and loan holding company or a subsidiary of a savings and loan holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).

(D) **INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.**—*The Board, to the fullest extent possible, shall request reports and other information filed by insurance savings and loan holding companies with other Federal or State authorities from such other authorities before requesting such reports or information from insurance savings and loan holding companies.*

(3) **BOOKS AND RECORDS.**—**[Each]**

(A) **IN GENERAL.**—*Each* savings and loan holding company shall maintain such books and records as may be prescribed by the Board.

(B) **INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.**—*The Board, to the fullest extent possible, shall align any prescribed recordkeeping requirements for insurance savings and loan holding companies with the recordkeeping requirements imposed by State insurance authorities.*

(4) **EXAMINATIONS.**—

(A) **IN GENERAL.**—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a savings and loan holding company and each subsidiary of a savings and loan holding company system, in order to—

(i) inform the Board of—

(I) the nature of the operations and financial condition of the savings and loan holding company and the subsidiary;

(II) the financial, operational, and other risks within the savings and loan holding company system that may pose a threat to—

(aa) the safety and soundness of the savings and loan holding company or of any depository institution subsidiary of the savings and loan holding company; or

- (bb) the stability of the financial system of the United States; and
- (III) the systems of the savings and loan holding company for monitoring and controlling the risks described in subclause (II); and
- (ii) monitor the compliance of the savings and loan holding company and the subsidiary with—
 - (I) this Act;
 - (II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and
 - (III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this subsection, the Board shall, to the fullest extent possible, rely on—

- (i) the examination reports made by other Federal or State regulatory agencies relating to a savings and loan holding company and any subsidiary; and
- (ii) the reports and other information required under paragraph (2).

(C) COORDINATION WITH OTHER REGULATORS.—The Board shall—

- (i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a savings and loan holding company before commencing an examination of the subsidiary under this section; **[and]**

- (ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information**[.]**; and

(iii) *INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.*—

(I) COORDINATION.—The Board, to the fullest extent possible, shall conduct examinations of insurance savings and loan holding companies in conjunction with other State and Federal authorities in order to minimize the potential for duplication and conflict between the inspections conducted by the Board and the examinations conducted by other State and Federal authorities.

(II) SCOPE AND FREQUENCY.—Following public notice and comment, the Board shall establish a schedule for the frequency and the scope of examinations of insurance savings and loan holding companies that is consistent with the supervisory framework required by paragraph (7).

(5) AGENT FOR SERVICE OF PROCESS.—The Board may require any savings and loan holding company, or persons connected

therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

(6) **RELEASE FROM REGISTRATION.**—The Board may at any time, upon the motion or application of the Board, release a registered savings and loan holding company from any registration theretofore made by such company, if the Board determines that such company no longer has control of any savings association.

(7) **INSURANCE SAVINGS AND LOAN HOLDING COMPANIES.**—

(A) **TAILORED SUPERVISION.**—*The Board, by rule, shall establish a supervisory framework for insurance savings and loan holding companies that—*

(i) is tailored to the unique risks, operations, and activities of insurance savings and loan holding companies; and

(ii) to the fullest extent possible, and consistent with the safe and sound operation of insurance savings and loan holding companies, does not unnecessarily duplicate the supervision of insurance underwriting companies by State insurance authorities.

(B) **REVIEW OF SUPERVISORY GUIDANCE.**—*Following public notice and comment, the Board shall review and revise supervisory policy letters and guidance applicable to insurance savings and loan holding companies to ensure that such letters and guidance are not inconsistent with the supervisory framework required by this paragraph.*

(c) **HOLDING COMPANY ACTIVITIES.**—

(1) **PROHIBITED ACTIVITIES.**—Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall—

(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

(B) commence any business activity, other than the activities described in paragraph (2); or

(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

(2) **EXEMPT ACTIVITIES.**—The prohibitions of subparagraphs (B) and (C) of paragraph (1) shall not apply to the following business activities of any savings and loan holding company or any subsidiary (of such company) which is not a savings association:

(A) Furnishing or performing management services for a savings association subsidiary of such company.

(B) Conducting an insurance agency or escrow business.

(C) Holding, managing, or liquidating assets owned or acquired from a savings association subsidiary of such company.

(D) Holding or managing properties used or occupied by a savings association subsidiary of such company.

(E) Acting as trustee under deed of trust.

(F) Any other activity—

(i) which the Board, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act of 1956, unless the Board, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

(ii) in which multiple savings and loan holding companies were authorized (by regulation) to directly engage on March 5, 1987.

(G) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if the purchase of such stock by such savings and loan holding company is approved by the Board pursuant to subsection (q)(1)(D).

(H) Any activity that is permissible for a financial holding company (as such term is defined under section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)) to conduct under section 4(k) of the Bank Holding Company Act of 1956 if—

(i) the savings and loan holding company meets all of the criteria to qualify as a financial holding company, and complies with all of the requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company; and

(ii) the savings and loan holding company conducts the activity in accordance with the same terms, conditions, and requirements that apply to the conduct of such activity by a bank holding company under the Bank Holding Company Act of 1956 and the Board's regulations and interpretations under such Act.

(3) CERTAIN LIMITATIONS ON ACTIVITIES NOT APPLICABLE TO CERTAIN HOLDING COMPANIES.—Notwithstanding paragraphs (4) and (6) of this subsection, the limitations contained in subparagraphs (B) and (C) of paragraph (1) shall not apply to any savings and loan holding company (or any subsidiary of such company) which controls—

(A) only 1 savings association, if the savings association subsidiary of such company is a qualified thrift lender (as determined under subsection (m)); or

(B) more than 1 savings association, if—

(i) all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company—

(I) pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act; or

(II) pursuant to an acquisition in which assistance was continued to a savings association under section 13(i) of the Federal Deposit Insurance Act; and

(ii) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under subsection (m)).

(4) PRIOR APPROVAL OF CERTAIN NEW ACTIVITIES REQUIRED.—

(A) IN GENERAL.—No savings and loan holding company and no subsidiary which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Board.

(B) FACTORS TO BE CONSIDERED.—In considering any application under subparagraph (A) by any savings and loan holding company or any subsidiary of any such company which is not a savings association, the Board shall consider—

(i) whether the performance of the activity described in such application by the company or the subsidiary can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects of such activity (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices);

(ii) the managerial resources of the companies involved; and

(iii) the adequacy of the financial resources, including capital, of the companies involved.

(C) DIRECTOR MAY DIFFERENTIATE BETWEEN NEW AND ONGOING ACTIVITIES.—In prescribing any regulation or considering any application under this paragraph, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern.

(D) APPROVAL OR DISAPPROVAL BY ORDER.—The approval or disapproval of any application under this paragraph by the Board shall be made in an order issued by the Board containing the reasons for such approval or disapproval.

(5) GRACE PERIOD TO ACHIEVE COMPLIANCE.—If any savings association referred to in paragraph (3) fails to maintain the status of such association as a qualified thrift lender, the Board may allow, for good cause shown, any company that controls such association (or any subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations contained in paragraph (1)(C).

(6) SPECIAL PROVISIONS RELATING TO CERTAIN COMPANIES AFFECTED BY 1987 AMENDMENTS.—

(A) EXCEPTION TO 2-YEAR GRACE PERIOD FOR ACHIEVING COMPLIANCE.—Notwithstanding paragraph (1)(C), any company which received approval under subsection (e) of this section to acquire control of a savings association between

March 5, 1987, and August 10, 1987, shall not continue any business activity other than an activity described in paragraph (2) after August 10, 1987.

(B) EXEMPTION FOR ACTIVITIES LAWFULLY ENGAGED IN BEFORE MARCH 5, 1987.—Notwithstanding paragraph (1)(C) and subject to subparagraphs (C) and (D), any savings and loan holding company which received approval, before March 5, 1987, under subsection (e) of this section to acquire control of a savings association may engage, directly or through any subsidiary (other than a savings association subsidiary of such company), in any activity in which such company or such subsidiary was lawfully engaged on such date.

(C) TERMINATION OF SUBPARAGRAPH (B) EXEMPTION.—The exemption provided under subparagraph (B) for activities engaged in by any savings and loan holding company or a subsidiary of such company (which is not a savings association) which would otherwise be prohibited under paragraph (1)(C) shall terminate with respect to such activities of such company or subsidiary upon the occurrence (after August 10, 1987) of any of the following:

(i) The savings and loan holding company acquires control of a bank or an additional savings association (other than a savings association acquired pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 406(f) or 408(m) of the National Housing Act).

(ii) Any savings association subsidiary of the savings and loan holding company fails to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986.

(iii) The savings and loan holding company engages in any business activity—

(I) which is not described in paragraph (2); and

(II) in which it was not engaged on March 5, 1987.

(iv) Any savings association subsidiary of the savings and loan holding company increases the number of locations from which such savings association conducts business after March 5, 1987 (other than an increase which occurs in connection with a transaction under section 13(c) or (k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act).

(v) Any savings association subsidiary of the savings and loan holding company permits any overdraft (including an intraday overdraft), or incurs any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft is the result of an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

(D) ORDER TO TERMINATE SUBPARAGRAPH (B) ACTIVITY.—Any activity described in subparagraph (B) may also be terminated by the Board, after opportunity for hearing, if

the Board determines, having due regard for the purposes of this Act, that such action is necessary to prevent conflicts of interest or unsound practices or is in the public interest.

(7) FOREIGN SAVINGS AND LOAN HOLDING COMPANY.—Notwithstanding any other provision of this section, any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof which is not a savings association), which controls a single savings association on August 10, 1987, shall not be subject to this subsection with respect to any activities of such holding company which are conducted exclusively in a foreign country.

(8) EXEMPTION FOR BANK HOLDING COMPANIES.—Except for paragraph (1)(A), this subsection shall not apply to any company that is treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956, or any of its subsidiaries.

(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—

(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

(i) under paragraph (1)(C) or (2) of this subsection; or

(ii) for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956.

(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on May 4, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office on or before that date, and that—

(i) meets and continues to meet the requirements of paragraph (3); and

(ii) continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office on or before that date, or the successor to such savings association.

(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction that—

(i) involves solely a company under common control with a savings and loan holding company from acquir-

ing, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

(ii) involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

(E) AUTHORITY TO PREVENT EVASIONS.—The Board may issue interpretations, regulations, or orders that the Board determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination (in consultation with the appropriate Federal banking agency) that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999; and

(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999.

(d) TRANSACTIONS WITH AFFILIATES.—Transactions between any subsidiary savings association of a savings and loan holding company and any affiliate (of such savings association subsidiary) shall be subject to the limitations and prohibitions specified in section 11 of this Act.

(e) ACQUISITIONS.—

(1) IN GENERAL.—It shall be unlawful for—

(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions—

(i) to acquire, except with the prior written approval of the Board, the control of a savings association or a savings and loan holding company, or to retain the control of such an association or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

(ii) to acquire, except with the prior written approval of the Board, by the process of merger, consolidation, or purchase of assets, another savings association or a savings and loan holding company, or all or substantially all of the assets of any such association or holding company;

(iii) to acquire, by purchase or otherwise, or to retain, except with the prior written approval of the Board, more than 5 percent of the voting shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, or in the case of a multiple savings and loan holding company (other than a company described in subsection (c)(8)), to acquire or retain, and the Board may not authorize acquisition or retention of, more than 5 percent of the voting shares of any company not a subsidiary which is engaged in any business activity other than the activities specified in subsection (c)(2). This clause shall not apply to shares of a savings association or of a savings and loan holding company—

(I) held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(II) held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(III) held in an account solely for trading purposes;

(IV) over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(V) acquired in securing or collecting a debt previously contracted in good faith, during the 2-year period beginning on the date of such acquisition or for such additional time (not exceeding 3 years) as the Board may permit if the Board determines that such an extension will not be detrimental to the public interest;

(VI) acquired under section 408(m) of the National Housing Act or section 13(k) of the Federal Deposit Insurance Act;

(VII) held by any insurance company, as defined in section 2(a)(17) of the Investment Company Act of 1940, except as provided in paragraph (6); or

(VIII) acquired pursuant to a qualified stock issuance if such purchase is approved by the Board under subsection (q)(1)(D);

except that the aggregate amount of shares held under this clause (other than under subclauses (I), (II), (III), (IV), and (VI)) may not exceed 15 percent of all outstanding shares or of the voting power of a savings association or savings and loan holding company; or

(iv) to acquire the control of an uninsured institution, or to retain for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the

Board may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Board finds such extension is warranted and is not detrimental to the public interest; and

(B) any other company, without the prior written approval of the Board, directly or indirectly, or through one or more subsidiaries or through one or more transactions, to acquire the control of one or more savings associations, except that such approval shall not be required in connection with the control of a savings association, (i) acquired by devise under the terms of a will creating a trust which is excluded from the definition of "savings and loan holding company" under subsection (a) of this section, (ii) acquired in connection with a reorganization in which a person or group of persons, having had control of a savings association for more than 3 years, vests control of that association in a newly formed holding company subject to the control of the same person or group of persons, or (iii) acquired by a bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company. The Board shall approve an acquisition of a savings association under this subparagraph unless the Board finds the financial and managerial resources and future prospects of the company and association involved to be such that the acquisition would be detrimental to the association or the insurance risk of the Deposit Insurance Fund, and shall render a decision within 90 days after submission to the Board of the complete record on the application.

Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.

(2) FACTORS TO BE CONSIDERED.—The Board shall not approve any acquisition under subparagraph (A)(i) or (A)(ii), or of more than one savings association under subparagraph (B) of paragraph (1) of this subsection, any acquisition of stock in connection with a qualified stock issuance, any acquisition under paragraph (4)(A), or any transaction under section 13(k) of the Federal Deposit Insurance Act, except in accordance with this paragraph. In every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company and association involved, the effect of the acquisition on the association, the insurance risk to the Deposit Insurance Fund, and the convenience and needs of the community to be served, and shall render a decision within 90 days after submission to the Board of the complete record on the application. Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association. Before approving any such acquisition, except a trans-

action under section 13(k) of the Federal Deposit Insurance Act, the Board shall request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Board shall not approve any proposed acquisition—

(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States,

(B) the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served,

(C) if the company fails to provide adequate assurances to the Board that the company will make available to the Board such information on the operations or activities of the company, and any affiliate of the company, as the Board determines to be appropriate to determine and enforce compliance with this Act,

(D) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country, or

(E) in the case of an application by a savings and loan holding company to acquire an insured depository institution, if—

(i) the home State of the insured depository institution is a State other than the home State of the savings and loan holding company;

(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States; and

(iii) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).

(3) INTERSTATE ACQUISITIONS.—No acquisition shall be approved by the Board under this subsection which will result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one State, unless—

(A) such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional State or States pursuant to section 13(k) of the Federal Deposit Insurance Act;

(B) such company controls a savings association subsidiary which operated a home or branch office in the additional State or States as of March 5, 1987; or

(C) the statutes of the State in which the savings association to be acquired is located permit a savings association chartered by such State to be acquired by a savings association chartered by the State where the acquiring savings association or savings and loan holding company is located or by a holding company that controls such a State chartered savings association, and such statutes specifically authorize such an acquisition by language to that effect and not merely by implication.

(4) ACQUISITIONS BY CERTAIN INDIVIDUALS.—

(A) IN GENERAL.—Notwithstanding subsection (h)(2), any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, may acquire control of any savings association not a subsidiary of such savings and loan holding company with the prior written approval of the Board.

(B) TREATMENT OF CERTAIN HOLDING COMPANIES.—If any individual referred to in subparagraph (A) controls more than 1 savings and loan holding company or more than 1 savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in subsection (c) to the same extent such limitations apply to multiple savings and loan holding companies, unless all or all but 1 of the savings associations (including any institution deemed to be a savings association under subsection (l) of this section) controlled directly or indirectly by such individual was acquired pursuant to an acquisition described in subclause (I) or (II) of subsection (c)(3)(B)(i).

(5) ACQUISITIONS PURSUANT TO CERTAIN SECURITY INTERESTS.—This subsection and subsection (c)(2) of this section do not apply to any savings and loan holding company which acquired the control of a savings association or of a savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business. It shall be unlawful for any such company to retain such control for more than one year after February 14, 1968, or from the date on which such control was acquired, whichever is later, except that the Board may upon application by such company extend such one-year period from year to year, for an additional period not exceeding 3 years, if the Board finds such extension is warranted and would not be detrimental to the public interest.

(6) SHARES HELD BY INSURANCE AFFILIATES.—Shares described in clause (iii)(VII) of paragraph (1)(A) shall not be excluded for purposes of clause (iii) of such paragraph if—

(A) all shares held under such clause (iii)(VII) by all insurance company affiliates of such savings association or savings and loan holding company in the aggregate exceed 5 percent of all outstanding shares or of the voting power

of the savings association or savings and loan holding company; or

(B) such shares are acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company.

(7) DEFINITIONS.—For purposes of paragraph (2)(E)—

(A) the terms “default”, “in danger of default”, and “insured depository institution” have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) the term “home State” means—

(i) with respect to a national bank, the State in which the main office of the bank is located;

(ii) with respect to a State bank or State savings association, the State by which the savings association is chartered;

(iii) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Board of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located; and

(iv) with respect to a savings and loan holding company, the State in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became a savings and loan holding company.

(f) DECLARATION OF DIVIDEND.—Every subsidiary savings association of a savings and loan holding company shall give the Board not less than 30 days’ advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Such notice period shall commence to run from the date of receipt of such notice by the Board. Any such dividend declared within such period, or without the giving of such notice to the Board, shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

(g) ADMINISTRATION AND ENFORCEMENT.—

(1) IN GENERAL.—The Board is authorized to issue such regulations and orders, including regulations and orders relating to capital requirements for savings and loan holding companies, as the Board deems necessary or appropriate to enable the Board to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof. In establishing capital regulations pursuant to this subsection, the appropriate Federal banking agency shall seek to make such requirements countercyclical so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.

(2) INVESTIGATIONS.—The Board may make such investigations as the Board deems necessary or appropriate to determine whether the provisions of this section, and regulations and orders thereunder, are being and have been complied with

by savings and loan holding companies and subsidiaries and affiliates thereof. For the purpose of any investigation under this section, the Board may administer oaths and affirmations, issue subpoenas, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which may be relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in any State. The Board may apply to the United States district court for the judicial district (or the United States court in any territory) in which any witness or company subpoenaed resides or carries on business, for enforcement of any subpoena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance.

(3) PROCEEDINGS.—(A) In any proceeding under subsection (a)(2)(D) or under paragraph (5) of this subsection, the Board may administer oaths and affirmations, take or cause to be taken depositions, and issue subpoenas. The Board may make regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to such proceedings may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States.

(B) Any hearing provided for in subsection (a)(2)(D) or under paragraph (5) of this section shall be held in the Federal judicial district or in the territory in which the principal office of the association or other company is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code.

(4) INJUNCTIONS.—Whenever it appears to the Board that any person is engaged or has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this section or of any regulation or order thereunder, the Board may bring an action in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce compliance with this section or any regulation or order, or to require the divestiture of any acquisition in violation of this section, or for any combination of the foregoing, and such courts shall have jurisdiction of such actions. Upon a proper showing an injunction, decree, restraining order, order of divestiture, or other appropriate order shall be granted without bond.

(5) CEASE AND DESIST ORDERS.—(A) Notwithstanding any other provision of this section, the Board may, whenever the Board has reasonable cause to believe that the continuation by a savings and loan holding company of any activity or of ownership or control of any of its noninsured subsidiaries constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association and is inconsistent with the sound operation of a savings association or with the purposes of this section or section 8 of the Federal Deposit Insurance Act, order the savings and loan holding company or any of its subsidiaries, after due notice and opportunity for hearing, to terminate such activities or to terminate (within 120 days or such longer period as the Board directs in unusual circumstances) its ownership or control of any such noninsured subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the savings and loan holding company. Such distribution shall be pro rata with respect to all of the shareholders of the distributing savings and loan holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(B) The Board may in the discretion of the Board apply to the United States district court within the jurisdiction of which the principal office of the company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith. Except as provided in subsection (j), no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(h) PROHIBITED ACTS.—It shall be unlawful for—

(1) any savings and loan holding company or subsidiary thereof, or any director, officer, employee, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares, of such holding company or subsidiary, to hold, solicit, or exercise any proxies in respect of any voting rights in a savings association which is a mutual association;

(2) any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, to acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Board pursuant to subsection (e)(4); or

(3) any individual, except with the prior approval of the Board, to serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company after having been convicted of any criminal offense involving dishonesty or breach of trust.

(i) PENALTIES.—

(1) CRIMINAL PENALTY.—(A) Whoever knowingly violates any provision of this section or being a company, violates any regulation or order issued by the Board under this section, shall be

imprisoned not more than 1 year, fined not more than \$100,000 per day for each day during which the violation continues, or both.

(B) Whoever, with the intent to deceive, defraud, or profit significantly, knowingly violates any provision of this section shall be fined not more than \$1,000,000 per day for each day during which the violation continues, imprisoned not more than 5 years, or both.

(2) CIVIL MONEY PENALTY.—

(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

(B) ASSESSMENT.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(C) HEARING.—The company or other person against whom any civil penalty is assessed under this paragraph shall be afforded a hearing if such company or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(E) VIOLATE DEFINED.—For purposes of this section, the term “violate” includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(F) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) CIVIL MONEY PENALTY.—

(A) PENALTY.—Any company which violates, and any person who participates in a violation of, any provision of this section, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation continues.

(B) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A) may be assessed and collected by the Board in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(C) HEARING.—The company or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such company or person

submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this paragraph.

(D) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(E) VIOLATE DEFINED.—For purposes of this section, the term “violate” includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(F) REGULATIONS.—The Board shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(4) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a savings and loan holding company or subsidiary thereof (including a separation caused by the deregistration of such a company or such a subsidiary) shall not affect the jurisdiction and authority of the Board to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such holding company or its subsidiary (whether such date occurs before, on, or after the date of the enactment of this paragraph).

(j) JUDICIAL REVIEW.—Any party aggrieved by an order of the Board under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28, United States Code.

(k) SAVINGS CLAUSE.—Nothing contained in this section, other than any transaction approved under subsection (e)(2) of this section or section 13 of the Federal Deposit Insurance Act, shall be interpreted or construed as approving any act, action, or conduct which is or has been or may be in violation of existing law, nor shall anything herein contained constitute a defense to any action, suit, or proceeding pending or hereafter instituted on account of any act, action, or conduct in violation of the antitrust laws.

(l) TREATMENT OF FDIC INSURED STATE SAVINGS BANKS AND CO-OPERATIVE BANKS AS SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a savings bank (as defined in section 3(g) of the Federal Deposit Insurance Act) and a cooperative bank that is an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) upon application shall be deemed to be a savings association for the purpose of this section, if the appropriate Federal banking agency determines that such bank is a qualified thrift lender (as determined under subsection (m)).

(2) FAILURE TO MAINTAIN QUALIFIED THRIFT LENDER STATUS.—If any savings bank which is deemed to be a savings association under paragraph (1) subsequently fails to maintain its status as a qualified thrift lender, as determined by the appropriate Federal banking agency, such bank may not thereafter be a qualified thrift lender for a period of 5 years.

(m) QUALIFIED THRIFT LENDER TEST.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (7), any savings association is a qualified thrift lender if—

(A) the savings association qualifies as a domestic building and loan association, as such term is defined in section 7701(a)(19) of the Internal Revenue Code of 1986; or

(B)(i) the savings association's qualified thrift investments equal or exceed 65 percent of the savings association's portfolio assets; and

(ii) the savings association's qualified thrift investments continue to equal or exceed 65 percent of the savings association's portfolio assets on a monthly average basis in 9 out of every 12 months.

(2) EXCEPTIONS GRANTED BY DIRECTOR.—Notwithstanding paragraph (1), the appropriate Federal banking agency may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in such paragraph as the appropriate Federal banking agency deems necessary if—

(A) the appropriate Federal banking agency determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

(B) the appropriate Federal banking agency determines that—

(i) the grant of any such exception will significantly facilitate an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act;

(ii) the acquired association will comply with the transition requirements of paragraph (7)(B), as if the date of the exemption were the starting date for the transition period described in that paragraph; and

(iii) the appropriate Federal banking agency determines that the exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of this subsection.

(3) FAILURE TO BECOME AND REMAIN A QUALIFIED THRIFT LENDER.—

(A) IN GENERAL.—A savings association that fails to become or remain a qualified thrift lender shall immediately be subject to the restrictions under subparagraph (B).

(B) RESTRICTIONS APPLICABLE TO SAVINGS ASSOCIATIONS THAT ARE NOT QUALIFIED THRIFT LENDERS.—

(i) RESTRICTIONS EFFECTIVE IMMEDIATELY.—The following restrictions shall apply to a savings association beginning on the date on which the savings association should have become or ceases to be a qualified thrift lender:

(I) ACTIVITIES.—The savings association shall not make any new investment (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association as a savings association.

(II) BRANCHING.—The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this subclause, a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender.

(III) DIVIDENDS.—The savings association may not pay dividends, except for dividends that—

(aa) would be permissible for a national bank;

(bb) are necessary to meet obligations of a company that controls such savings association; and

(cc) are specifically approved by the Comptroller of the Currency and the Board after a written request submitted to the Comptroller of the Currency and the Board by the savings association not later than 30 days before the date of the proposed payment.

(IV) REGULATORY AUTHORITY.—A savings association that fails to become or remain a qualified thrift lender shall be deemed to have violated section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) and subject to actions authorized by section 5(d) of the Home Owners' Loan Act (12 U.S.C. 1464(d)).

(ii) ADDITIONAL RESTRICTIONS EFFECTIVE AFTER 3 YEARS.—Beginning 3 years after the date on which a savings association should have become a qualified thrift lender, or the date on which the savings association ceases to be a qualified thrift lender, as applica-

ble, the savings association shall not retain any investment (including an investment in any subsidiary) or engage, directly or indirectly, in any activity, unless that investment or activity—

(I) would be permissible for the savings association if it were a national bank; and

(II) is permissible for the savings association as a savings association.

(C) **HOLDING COMPANY REGULATION.**—Any company that controls a savings association that is subject to any provision of subparagraph (B) shall, within one year after the date on which the savings association should have become or ceases to be a qualified thrift lender, register as and be deemed to be a bank holding company subject to all of the provisions of the Bank Holding Company Act of 1956, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies, in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act of 1956.

(D) **REQUALIFICATION.**—A savings association that should have become or ceases to be a qualified thrift lender shall not be subject to subparagraph (B) or (C) if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement in paragraph (1) on a monthly average basis in 9 out of the preceding 12 months and remains a qualified thrift lender. If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time thereafter ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of subparagraphs (B) and (C) as if all the periods described in subparagraphs (B)(ii) and (C) had expired.

(E) **EXEMPTION FOR SPECIALIZED SAVINGS ASSOCIATIONS SERVING CERTAIN MILITARY PERSONNEL.**—Subparagraph (A) shall not apply to a savings association subsidiary of a savings and loan holding company if at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former members in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such members.

(F) **EXEMPTION FOR CERTAIN FEDERAL SAVINGS ASSOCIATIONS.**—This paragraph shall not apply to any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(i) that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law; or

(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

(G) NO CIRCUMVENTION OF EXIT MORATORIUM.—Subparagraph (A) of this paragraph shall not be construed as permitting any insured depository institution to engage in any conversion transaction prohibited under section 5(d) of the Federal Deposit Insurance Act.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) ACTUAL THRIFT INVESTMENT PERCENTAGE.—The term “actual thrift investment percentage” means the percentage determined by dividing—

- (i) the amount of a savings association’s qualified thrift investments, by
- (ii) the amount of the savings association’s portfolio assets.

(B) PORTFOLIO ASSETS.—The term “portfolio assets” means, with respect to any savings association, the total assets of the savings association, minus the sum of—

- (i) goodwill and other intangible assets;
- (ii) the value of property used by the savings association to conduct its business; and
- (iii) liquid assets of the type required to be maintained under section 6 of the Home Owners’ Loan Act, as in effect on the day before the date of the enactment of the Financial Regulatory Relief and Economic Efficiency Act of 2000, in an amount not exceeding the amount equal to 20 percent of the savings association’s total assets.

(C) QUALIFIED THRIFT INVESTMENTS.—

(i) IN GENERAL.—The term “qualified thrift investments” means, with respect to any savings association, the assets of the savings association that are described in clauses (ii) and (iii).

(ii) ASSETS INCLUDIBLE WITHOUT LIMIT.—The following assets are described in this clause for purposes of clause (i):

(I) The aggregate amount of loans held by the savings association that were made to purchase, refinance, construct, improve, or repair domestic residential housing or manufactured housing.

(II) Home-equity loans.

(III) Securities backed by or representing an interest in mortgages on domestic residential housing or manufactured housing.

(IV) EXISTING OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Direct or indirect obligations of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation issued in accordance with the terms of agreements entered into prior to July 1, 1989, for the 10-year period beginning on the date of issuance of such obligations.

(V) NEW OBLIGATIONS OF DEPOSIT INSURANCE AGENCIES.—Obligations of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the FSLIC Resolu-

tion Fund, and the Resolution Trust Corporation issued in accordance with the terms of agreements entered into on or after July 1, 1989, for the 5-year period beginning on the date of issuance of such obligations.

(VI) Shares of stock issued by any Federal home loan bank.

(VII) Loans for educational purposes, loans to small businesses, and loans made through credit cards or credit card accounts.

(iii) ASSETS INCLUDIBLE SUBJECT TO PERCENTAGE RESTRICTION.—The following assets are described in this clause for purposes of clause (i):

(I) 50 percent of the dollar amount of the residential mortgage loans originated by such savings association and sold within 90 days of origination.

(II) Investments in the capital stock or obligations of, and any other security issued by, any service corporation if such service corporation derives at least 80 percent of its annual gross revenues from activities directly related to purchasing, refinancing, constructing, improving, or repairing domestic residential real estate or manufactured housing.

(III) 200 percent of the dollar amount of loans and investments made to acquire, develop, and construct 1- to 4-family residences the purchase price of which is or is guaranteed to be not greater than 60 percent of the median value of comparable newly constructed 1- to 4-family residences within the local community in which such real estate is located, except that not more than 25 percent of the amount included under this subclause may consist of commercial properties related to the development if those properties are directly related to providing services to residents of the development.

(IV) 200 percent of the dollar amount of loans for the acquisition or improvement of residential real property, churches, schools, and nursing homes located within, and loans for any other purpose to any small businesses located within any area which has been identified by the appropriate Federal banking agency, in connection with any review or examination of community reinvestment practices, as a geographic area or neighborhood in which the credit needs of the low- and moderate-income residents of such area or neighborhood are not being adequately met.

(V) Loans for the purchase or construction of churches, schools, nursing homes, and hospitals, other than those qualifying under clause (IV), and loans for the improvement and upkeep of such properties.

(VI) Loans for personal, family, or household purposes (other than loans for personal, family, or household purposes described in clause (ii)(VII)).

(VII) Shares of stock issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(iv) PERCENTAGE RESTRICTION APPLICABLE TO CERTAIN ASSETS.—The aggregate amount of the assets described in clause (iii) which may be taken into account in determining the amount of the qualified thrift investments of any savings association shall not exceed the amount which is equal to 20 percent of a savings association's portfolio assets.

(v) The term "qualified thrift investments" excludes—

(I) except for home equity loans, that portion of any loan or investment that is used for any purpose other than those expressly qualifying under any subparagraph of clause (ii) or (iii); or

(II) goodwill or any other intangible asset.

(D) CREDIT CARD.—The appropriate Federal banking agency shall issue such regulations as may be necessary to define the term "credit card".

(E) SMALL BUSINESS.—The appropriate Federal banking agency shall issue such regulations as may be necessary to define the term "small business".

(5) CONSISTENT ACCOUNTING REQUIRED.—

(A) In determining the amount of a savings association's portfolio assets, the assets of any subsidiary of the savings association shall be consolidated with the assets of the savings association if—

(i) Assets of the subsidiary are consolidated with the assets of the savings association in determining the savings association's qualified thrift investments; or

(ii) Residential mortgage loans originated by the subsidiary are included pursuant to paragraph (4)(C)(iii)(I) in determining the savings association's qualified thrift investments.

(B) In determining the amount of a savings association's portfolio assets and qualified thrift investments, consistent accounting principles shall be applied.

(6) SPECIAL RULES FOR PUERTO RICO AND VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—

(A) PUERTO RICO SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in Puerto Rico—

(i) the term "qualified thrift investments" includes, in addition to the items specified in paragraph (4)—

(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Commonwealth of Puerto Rico; and

(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses,

located within the Commonwealth of Puerto Rico;
and

(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

(I) which is located within the Commonwealth of Puerto Rico; and

(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Commonwealth of Puerto Rico, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

(B) VIRGIN ISLANDS SAVINGS ASSOCIATIONS.—With respect to any savings association headquartered and operating primarily in the Virgin Islands—

(i) the term “qualified thrift investments” includes, in addition to the items specified in paragraph (4)—

(I) the aggregate amount of loans for personal, family, educational, or household purposes made to persons residing or domiciled in the Virgin Islands; and

(II) the aggregate amount of loans for the acquisition or improvement of churches, schools, or nursing homes, and of loans to small businesses, located within the Virgin Islands; and

(ii) the aggregate amount of loans related to the purchase, acquisition, development and construction of 1- to 4-family residential real estate—

(I) which is located within the Virgin Islands; and

(II) the value of which (at the time of acquisition or upon completion of the development and construction) is below the median value of newly constructed 1- to 4-family residences in the Virgin Islands, which may be taken into account in determining the amount of the qualified thrift investments and of such savings association shall be doubled.

(7) TRANSITIONAL RULE FOR CERTAIN SAVINGS ASSOCIATIONS.—

(A) IN GENERAL.—If any Federal savings association in existence as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(i) that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982; or

(ii) that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law, meets the requirements of subparagraph (B), such savings association shall be treated as a qualified thrift lender during the period ending on September 30, 1995.

(B) SUBPARAGRAPH (B) REQUIREMENTS.—A savings association meets the requirements of this subparagraph if, in the determination of the appropriate Federal banking agency—

(i) the actual thrift investment percentage of such association does not, after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, decrease below the actual thrift investment percentage of such association on July 15, 1989; and

(ii) the amount by which—

(I) the actual thrift investment percentage of such association at the end of each period described in the following table, exceeds

(II) the actual thrift investment percentage of such association on July 15, 1989,

is equal to or greater than the applicable percentage (as determined under the following table) of the amount by which 70 percent exceeds the actual thrift investment percentage of such association on such date of enactment:

For the following period:	The applicable percentage is:
July 1, 1991–September 30, 1992	25 percent
October 1, 1992–March 31, 1994	50 percent
April 1, 1994–September 30, 1995	75 percent
Thereafter	100 percent

(C) For purposes of this paragraph, the actual thrift investment percentage of an association on July 15, 1989, shall be determined by applying the definition of “actual thrift investment percentage” that takes effect on July 1, 1991.

(n) TYING RESTRICTIONS.—A savings and loan holding company and any of its affiliates shall be subject to section 5(q) and regulations prescribed under such section, in connection with transactions involving the products or services of such company or affiliate and those of an affiliated savings association as if such company or affiliate were a savings association.

(o) MUTUAL HOLDING COMPANIES.—

(1) IN GENERAL.—A savings association operating in mutual form may reorganize so as to become a holding company by—

(A) chartering an interim savings association, the stock of which is to be wholly owned, except as otherwise provided in this section, by the mutual association; and

(B) transferring the substantial part of its assets and liabilities, including all of its insured liabilities, to the interim savings association.

(2) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’ APPROVAL OF PLAN REQUIRED.—A reorganization is not authorized under this subsection unless—

(A) a plan providing for such reorganization has been approved by a majority of the board of directors of the mutual savings association; and

(B) in the case of an association in which holders of accounts and obligors exercise voting rights, such plan has

been submitted to and approved by a majority of such individuals at a meeting held at the call of the directors in accordance with the procedures prescribed by the association's charter and bylaws.

(3) NOTICE TO THE DIRECTOR; DISAPPROVAL PERIOD.—

(A) NOTICE REQUIRED.—At least 60 days prior to taking any action described in paragraph (1), a savings association seeking to establish a mutual holding company shall provide written notice to the Board. The notice shall contain such relevant information as the Board shall require by regulation or by specific request in connection with any particular notice.

(B) TRANSACTION ALLOWED IF NOT DISAPPROVED.—Unless the Board within such 60-day notice period disapproves the proposed holding company formation, or extends for another 30 days the period during which such disapproval may be issued, the savings association providing such notice may proceed with the transaction, if the requirements of paragraph (2) have been met.

(C) GROUNDS FOR DISAPPROVAL.—The Board may disapprove any proposed holding company formation only if—

- (i) such disapproval is necessary to prevent unsafe or unsound practices;
- (ii) the financial or management resources of the savings association involved warrant disapproval;
- (iii) the savings association fails to furnish the information required under subparagraph (A); or
- (iv) the savings association fails to comply with the requirement of paragraph (2).

(D) RETENTION OF CAPITAL ASSETS.—In connection with the transaction described in paragraph (1), a savings association may, subject to the approval of the Board, retain capital assets at the holding company level to the extent that such capital exceeds the association's capital requirement established by the Board pursuant to subsections (s) and (t) of section 5.

(4) OWNERSHIP.—

(A) IN GENERAL.—Persons having ownership rights in the mutual association pursuant to section 5(b)(1)(B) of this Act or State law shall have the same ownership rights with respect to the mutual holding company.

(B) HOLDERS OF CERTAIN ACCOUNTS.—Holders of savings, demand or other accounts of—

- (i) a savings association chartered as part of a transaction described in paragraph (1); or
- (ii) a mutual savings association acquired pursuant to paragraph (5)(B),

shall have the same ownership rights with respect to the mutual holding company as persons described in subparagraph (A) of this paragraph.

(5) PERMITTED ACTIVITIES.—A mutual holding company may engage only in the following activities:

(A) Investing in the stock of a savings association.

(B) Acquiring a mutual association through the merger of such association into a savings association subsidiary of

such holding company or an interim savings association subsidiary of such holding company.

(C) Subject to paragraph (6), merging with or acquiring another holding company, one of whose subsidiaries is a savings association.

(D) Investing in a corporation the capital stock of which is available for purchase by a savings association under Federal law or under the law of any State where the subsidiary savings association or associations have their home offices.

(E) Engaging in the activities described in subsection (c)(2) or (c)(9)(A)(ii).

(6) LIMITATIONS ON CERTAIN ACTIVITIES OF ACQUIRED HOLDING COMPANIES.—

(A) NEW ACTIVITIES.—If a mutual holding company acquires or merges with another holding company under paragraph (5)(C), the holding company acquired or the holding company resulting from such merger or acquisition may only invest in assets and engage in activities which are authorized under paragraph (5).

(B) GRACE PERIOD FOR DIVESTING PROHIBITED ASSETS OR DISCONTINUING PROHIBITED ACTIVITIES.—Not later than 2 years following a merger or acquisition described in paragraph (5)(C), the acquired holding company or the holding company resulting from such merger or acquisition shall—

(i) dispose of any asset which is an asset in which a mutual holding company may not invest under paragraph (5); and

(ii) cease any activity which is an activity in which a mutual holding company may not engage under paragraph (5).

(7) REGULATION.—A mutual holding company shall be chartered by the Board and shall be subject to such regulations as the Board may prescribe. Unless the context otherwise requires, a mutual holding company shall be subject to the other requirements of this section regarding regulation of holding companies.

(8) CAPITAL IMPROVEMENT.—

(A) PLEDGE OF STOCK OF SAVINGS ASSOCIATION SUBSIDIARY.—This section shall not prohibit a mutual holding company from pledging all or a portion of the stock of a savings association chartered as part of a transaction described in paragraph (1) to raise capital for such savings association.

(B) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a savings association chartered as part of a transaction described in paragraph (1) from issuing any nonvoting shares or less than 50 percent of the voting shares of such association to any person other than the mutual holding company.

(9) INSOLVENCY AND LIQUIDATION.—

(A) IN GENERAL.—Notwithstanding any provision of law, upon—

(i) the default of any savings association—

(I) the stock of which is owned by any mutual holding company; and

(II) which was chartered in a transaction described in paragraph (1);

(ii) the default of a mutual holding company; or

(iii) a foreclosure on a pledge by a mutual holding company described in paragraph (8)(A),

a trustee shall be appointed receiver of such mutual holding company and such trustee shall have the authority to liquidate the assets of, and satisfy the liabilities of, such mutual holding company pursuant to title 11, United States Code.

(B) DISTRIBUTION OF NET PROCEEDS.—Except as provided in subparagraph (C), the net proceeds of any liquidation of any mutual holding company pursuant to subparagraph (A) shall be transferred to persons who hold ownership interests in such mutual holding company.

(C) RECOVERY BY CORPORATION.—If the Corporation incurs a loss as a result of the default of any savings association subsidiary of a mutual holding company which is liquidated pursuant to subparagraph (A), the Corporation shall succeed to the ownership interests of the depositors of such savings association in the mutual holding company, to the extent of the Corporation's loss.

(10) DEFINITIONS.—For purposes of this subsection—

(A) MUTUAL HOLDING COMPANY.—The term “mutual holding company” means a corporation organized as a holding company under this subsection.

(B) MUTUAL ASSOCIATION.—The term “mutual association” means a savings association which is operating in mutual form.

(C) DEFAULT.—The term “default” means an adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed.

(11) DIVIDENDS.—

(A) DECLARATION OF DIVIDENDS.—

(i) ADVANCE NOTICE REQUIRED.—Each subsidiary of a mutual holding company that is a savings association shall give the appropriate Federal banking agency and the Board notice not later than 30 days before the date of a proposed declaration by the board of directors of the savings association of any dividend on the guaranty, permanent, or other nonwithdrawable stock of the savings association.

(ii) INVALID DIVIDENDS.—Any dividend described in clause (i) that is declared without giving notice to the appropriate Federal banking agency and the Board under clause (i), or that is declared during the 30-day period preceding the date of a proposed declaration for which notice is given to the appropriate Federal banking agency and the Board under clause (i), shall be invalid and shall confer no rights or benefits upon the holder of any such stock.

(B) **WAIVER OF DIVIDENDS.**—A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

(i) no insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

(ii) the mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

(C) **RESOLUTION INCLUDED IN WAIVER NOTICE.**—A notice of a waiver under subparagraph (B) shall include a copy of the resolution of the board of directors of the mutual holding company, in such form and substance as the Board may determine, together with any supporting materials relied upon by the board of directors of the mutual holding company, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company.

(D) **STANDARDS FOR WAIVER OF DIVIDEND.**—The Board may not object to a waiver of dividends under subparagraph (B) if—

(i) the waiver would not be detrimental to the safe and sound operation of the savings association;

(ii) the board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company; and

(iii) the mutual holding company has, prior to December 1, 2009—

(I) reorganized into a mutual holding company under subsection (o);

(II) issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association; and

(III) waived dividends it had a right to receive from the subsidiary stock savings association.

(E) **VALUATION.**—

(i) **IN GENERAL.**—The appropriate Federal banking agency shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(ii) **EXCEPTION.**—In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary sav-

ings association before December 1, 2009, the appropriate Federal banking agency shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(p) **HOLDING COMPANY ACTIVITIES CONSTITUTING SERIOUS RISK TO SUBSIDIARY SAVINGS ASSOCIATION.**—

(1) **DETERMINATION AND IMPOSITION OF RESTRICTIONS.**—If the Board or the appropriate Federal banking agency for the savings association determines that there is reasonable cause to believe that the continuation by a savings and loan holding company of any activity constitutes a serious risk to the financial safety, soundness, or stability of a savings and loan holding company's subsidiary savings association, the Board may impose such restrictions as the Board, in consultation with the appropriate Federal banking agency for the savings association determines to be necessary to address such risk. Such restrictions shall be issued in the form of a directive to the holding company and any of its subsidiaries, limiting—

(A) the payment of dividends by the savings association;

(B) transactions between the savings association, the holding company, and the subsidiaries or affiliates of either; and

(C) any activities of the savings association that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association.

Such directive shall be effective as a cease and desist order that has become final.

(2) **REVIEW OF DIRECTIVE.**—

(A) **ADMINISTRATIVE REVIEW.**—After a directive referred to in paragraph (1) is issued, the savings and loan holding company, or any subsidiary of such holding company subject to the directive, may object and present in writing its reasons why the directive should be modified or rescinded. Unless within 10 days after receipt of such response the Board affirms, modifies, or rescinds the directive, such directive shall automatically lapse.

(B) **JUDICIAL REVIEW.**—If the Board affirms or modifies a directive pursuant to subparagraph (A), any affected party may immediately thereafter petition the United States district court for the district in which the savings and loan holding company has its main office or in the United States District Court for the District of Columbia to stay, modify, terminate or set aside the directive. Upon a showing of extraordinary cause, the savings and loan holding company, or any subsidiary of such holding company subject to a directive, may petition a United States district court for relief without first pursuing or exhausting the administrative remedies set forth in this paragraph.

(q) **QUALIFIED STOCK ISSUANCE BY UNDERCAPITALIZED SAVINGS ASSOCIATIONS OR HOLDING COMPANIES.**—

(1) IN GENERAL.—For purposes of this section, any issue of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

(A) The shares of stock are issued by—

- (i) an undercapitalized savings association; or
- (ii) a savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(B) All shares of stock issued consist of previously unissued stock or treasury shares.

(C) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Board in accordance with the provisions of subsection (b)(1) of this section.

(D) Subject to paragraph (2), the Board approved the purchase of the shares of stock by the acquiring savings and loan holding company.

(E) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(F) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to subsection (c) or (k) of section 13 of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(G) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(H) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(I) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11.

(2) APPROVAL OF ACQUISITIONS.—

(A) ADDITIONAL CAPITAL COMMITMENTS NOT REQUIRED.—

The Board shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the

capital of the undercapitalized savings association at or above the minimum level required by the Board or any other Federal agency having jurisdiction.

(B) OTHER CONDITIONS.—Notwithstanding subsection (a)(4), the Board may impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Board determines to be appropriate, including—

(i) a requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Board may require; and

(ii) such other conditions as the Board deems necessary or appropriate to prevent evasions of this section.

(C) APPLICATION DEEMED APPROVED IF NOT DISAPPROVED WITHIN 90 DAYS.—An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Board if such application has not been disapproved by the Board before the end of the 90-day period beginning on the date such application has been deemed sufficient under regulations issued by the Board.

(3) NO LIMITATION ON CLASS OF STOCK ISSUED.—The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(4) UNDERCAPITALIZED SAVINGS ASSOCIATION DEFINED.—For purposes of this subsection, the term “undercapitalized savings association” means any savings association—

(A) the assets of which exceed the liabilities of such association; and

(B) which does not comply with one or more of the capital standards in effect under section 5(t).

(r) PENALTY FOR FAILURE TO PROVIDE TIMELY AND ACCURATE REPORTS.—

(1) FIRST TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

(i) fails to submit or publish any report or information required under this section or regulations prescribed by the Board or appropriate Federal banking agency, within the period of time specified by the Board or appropriate Federal banking agency; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such holding company or subsidiary shall have the burden of proving by a preponderance of the evidence that an error was inadvertent

and unintentional and that a report was inadvertently transmitted or published late.

(2) SECOND TIER.—Any savings and loan holding company, and any subsidiary of such holding company, which—

(A) fails to submit or publish any report or information required under this section or under regulations prescribed by the Board or appropriate Federal banking agency, within the period of time specified by the Board or appropriate Federal banking agency; or

(B) submits or publishes any false or misleading report or information, in a manner not described in paragraph (1) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(3) THIRD TIER.—If any savings and loan holding company or any subsidiary of such a holding company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the Board or appropriate Federal banking agency may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such company or subsidiary, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(4) ASSESSMENT.—Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Board or appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(5) HEARING.—Any savings and loan holding company or any subsidiary of such a holding company against which any penalty is assessed under this subsection shall be afforded a hearing if such savings and loan holding company or such subsidiary, as the case may be, submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

(s) MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.—

(1) IN GENERAL.—Subject to sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act and all other applicable laws, any Federal savings association may acquire or be acquired by any insured depository institution.

(2) EXPEDITED APPROVAL OF ACQUISITIONS.—

(A) IN GENERAL.—Any application by a savings association to acquire or be acquired by another insured depository institution which is required to be filed with the appropriate Federal banking agency for the savings association under any applicable law or regulation shall be approved or disapproved in writing by the appropriate Federal banking agency for the savings association before the

end of the 60-day period beginning on the date such application is filed with the agency.

(B) EXTENSION OF PERIOD.—The period for approval or disapproval referred to in subparagraph (A) may be extended for an additional 30-day period if the appropriate Federal banking agency for the savings association determines that—

(i) an applicant has not furnished all of the information required to be submitted; or

(ii) in the judgment of the appropriate Federal banking agency for the savings association, any material information submitted is substantially inaccurate or incomplete.

(3) ACQUIRE DEFINED.—For purposes of this subsection, the term “acquire” means to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

(4) REGULATIONS.—

(A) REQUIRED.—The Comptroller shall prescribe such regulations as may be necessary to carry out paragraph (1).

(B) EFFECTIVE DATE.—The regulations required under subparagraph (A) shall—

(i) be prescribed in final form before the end of the 90-day period beginning on the date of the enactment of this subsection; and

(ii) take effect before the end of the 120-day period beginning on such date.

(5) LIMITATION.—No provision of this section shall be construed to authorize a national bank or any subsidiary thereof to engage in any activity not otherwise authorized under the National Bank Act or any other law governing the powers of a national bank.

(t) EXEMPTION FOR BANK HOLDING COMPANIES.—This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956, or any company controlled by such bank holding company.

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FEDERAL RESERVE ACT

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SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a)(1) To examine at its discretion the accounts, books and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single

and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State savings associations that are insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), State non-member banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) the Comptroller of the Currency in the case of any Federal savings association which is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

(b) To permit, or, on the affirmative vote of at least five members of the Board of Governors of the Federal Reserve System to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board of Governors of the Federal Reserve System.

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this Act.

(d) To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be delivered by the Secretary of the Treasury to the Federal reserve agents applying therefor.

(e) To add to the number of cities classified as Reserve cities under existing law in which national banking associations are subject to the Reserve requirements set forth in section twenty of this Act; or to reclassify existing Reserve cities or to terminate their designation as such.

(f) To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith commu-

nicated in writing by the Board of Governors of the Federal Reserve System to the removed officer or director and to said bank.

(g) To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

(h) To suspend, for the violation of any of the provisions of this Act, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

(i) To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this Act, and make all rules and regulations necessary to enable said board effectively to perform the same.

(j) To exercise general supervision over said Federal reserve banks.

(k) To delegate, by published order or rule and subject to the Administrative Procedure Act, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe. The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.

(l) To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board. All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

(n) To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this Act.

(o) **AUTHORITY TO APPOINT CONSERVATOR OR RECEIVER.**—The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 11(c)(9) of the Federal Deposit Insurance Act.

(p) **AUTHORITY.**—The Board may act in its own name and through its own attorneys in enforcing any provision of this title, regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party

and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956), or other entity, or the administration of its operations.

(q) UNIFORM PROTECTION AUTHORITY FOR FEDERAL RESERVE FACILITIES.—

(1) Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve bank, and operations conducted by or on behalf of the Board or a reserve bank.

(2) The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank's premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.

(3) Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

(4) For purposes of this subsection, the term "law enforcement officers" means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

(5) The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General.

(r)(1) Any action that this Act provides may be taken only upon the affirmative vote of 5 members of the Board may be taken upon the unanimous vote of all members then in office if there are fewer than 5 members in office at the time of the action.

(2)(A) Any action that the Board is otherwise authorized to take under section 13(3) may be taken upon the unanimous vote of all available members then in office, if—

(i) at least 2 members are available and all available members participate in the action;

(ii) the available members unanimously determine that—

(I) unusual and exigent circumstances exist and the borrower is unable to secure adequate credit accommodations from other sources;

(II) action on the matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system of the United States;

(III) despite the use of all means available (including all available telephonic, telegraphic, and other electronic

means), the other members of the Board have not been able to be contacted on the matter; and

(IV) action on the matter is required before the number of Board members otherwise required to vote on the matter can be contacted through any available means (including all available telephonic, telegraphic, and other electronic means); and

(iii) any credit extended by a Federal reserve bank pursuant to such action is payable upon demand of the Board.

(B) The available members of the Board shall document in writing the determinations required by subparagraph (A)(ii), and such written findings shall be included in the record of the action and in the official minutes of the Board, and copies of such record shall be provided as soon as practicable to the members of the Board who were not available to participate in the action and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Chairman of the Committee on Financial Services of the House of Representatives.

(s) FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.—

(1) IN GENERAL.—In order to ensure the disclosure in a timely manner consistent with the purposes of this Act of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)—

(A) the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;

(B) the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;

(C) the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and

(D) information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.

(2) MANDATORY RELEASE DATE.—In the case of—

(A) a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and

(B) a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.

(3) EARLIER RELEASE DATE AUTHORIZED.—The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph (2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) CREDIT FACILITY.—The term “credit facility” has the same meaning as in section 714(f)(1)(A) of title 31, United States Code.

(B) COVERED TRANSACTION.—The term “covered transaction” means—

- (i) any open market transaction with a nongovernmental third party conducted under the first undesignated paragraph of section 14 or subparagraph (a), (b), or (c) of the 2nd undesignated paragraph of such section, after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and
- (ii) any advance made under section 10B after the date of enactment of that Act.

(5) TERMINATION OF CREDIT FACILITY BY OPERATION OF LAW.—A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.

(6) CONSISTENT TREATMENT OF INFORMATION.—Except as provided in this subsection or section 13(3)(D), or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title, shall be confidential, including for purposes of section 552(b)(3) of title 5 of such Code, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.

(7) PROTECTION OF PERSONAL PRIVACY.—This subsection and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 502 of the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.

(8) STUDY OF FOIA EXEMPTION IMPACT.—

(A) STUDY.—The Inspector General of the Board of Governors of the Federal Reserve System shall—

- (i) conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount window lending programs, and open market operations; and

(ii) make any recommendations on whether the exemption described in clause (i) should remain in effect.

(B) REPORT.—Not later than 30 months after the date of enactment of this section, the Inspector General of the Board of Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.

(9) RULE OF CONSTRUCTION.—Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), on or before the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(s) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

(2) COMPANIES.—The companies described in this paragraph are—

(A) all bank holding companies having total consolidated assets of \$100,000,000,000 or more;

(B) all savings and loan holding companies having total consolidated assets of \$100,000,000,000 or more; and

(C) all nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(3) TAILORING ASSESSMENTS.—In collecting assessments, fees, or other charges under paragraph (1) from each company described in paragraph (2) with total consolidated assets of between \$100,000,000,000 and \$250,000,000,000, the Board shall adjust the amount charged to reflect any changes in supervisory and regulatory responsibilities resulting from the Economic Growth, Regulatory Relief, and Consumer Protection Act with respect to each such company.

(4) EXCLUDED ASSETS.—*For purposes of paragraph (2)(B), the total consolidated assets of an insurance savings and loan holding company, as defined in section 10(a)(1)(L) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(L)), shall not include assets attributable to the business of insurance conducted by such company or any affiliate of such company, other than assets associated with insurance for credit risk.*

* * * * *