the Federal Loan Agency which was established by Reorg. Plan No. I of 1939, §402, set out in the Appendix to Title 5, Government Organization and Employees, and continued as an independent establishment of the Government by act Feb. 24, 1945, ch. 4, 59 Stat. 5, and was abolished by section 204 of act June 30, 1947, ch. 166, title II, 61 Stat. 208, and its property and records were transferred to the Reconstruction Finance Corporation. By act June 24, 1954, ch. 410, §2(a), 68 Stat. 320, section 609 of Title 15, Commerce and Trade, the Secretary of the Treasury was authorized to liquidate the Reconstruction Finance Corporation. Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of Title 15, Commerce and Trade, abolished the Reconstruction Finance Corporation.

CHAPTER 16—FEDERAL DEPOSIT INSURANCE CORPORATION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 161, 203, 205, 211, 222, 329, 461, 1422, 1441, 1441a, 1464, 1467a, 1470, 1828a, 1841, 1843, 2254, 3104, 3105, 3108, 4713, 4717 of this title; title 15 sections 78c, 78*l*, 78m; title 40 section 474; title 42 section 5318a.

§ 1811. Federal Deposit Insurance Corporation

(a) Establishment of Corporation

There is hereby established a Federal Deposit Insurance Corporation (hereinafter referred to as the ''Corporation'') which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to the benefits of insurance under this chapter, and which shall have the powers hereinafter granted.

(b) Asset disposition division

(1) Establishment

The Corporation shall have a separate division of asset disposition.

(2) Management

The division of asset disposition shall have an administrator who shall be appointed by the Board of Directors.

(3) Responsibilities of division

The division of asset disposition shall carry out all of the responsibilities of the Corporation under this chapter relating to the liquidation of insured depository institutions and the disposition of assets of such institutions.

(Sept. 21, 1950, ch. 967, § 2[1], 64 Stat. 873; Pub. L. 101–73, title II, § 202, Aug. 9, 1989, 103 Stat. 188; Pub. L. 103–204, § 22(a), Dec. 17, 1993, 107 Stat. 2407.)

CODIFICATION

The Federal Deposit Insurance Corporation was originally created as a part of the Federal Reserve Act by act June 16, 1933, ch. 89, § 8, 48 Stat. 168, which added section 12B to the Federal Reserve Act, act Dec. 23, 1913, ch. 6, 38 Stat. 103, and was classified to section 264 of this title. Act Dec. 23, 1913, ch. 6, § 12B, as added June 16, 1933, ch. 89, § 8, 48 Stat. 168 has been amended by acts June 16, 1934, ch. 546, § 1(1)–(10), 48 Stat. 969, 970; June 28, 1935, ch. 335, 49 Stat. 435; Aug. 23, 1935, ch. 614, § 101, 49 Stat. 684; Apr. 21, 1936, ch. 244, 49 Stat. 1237; May 25, 1938, ch. 276, 52 Stat. 442; June 16, 1938, ch. 489, 52 Stat. 767; June 20, 1939, ch. 214, § 2, 53 Stat. 842; Apr. 13, 1943, ch. 62, § 1, 57 Stat. 65; Aug. 5, 1947, ch. 492, §§ 2, 4, 61 Stat. 773; June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948; Oct. 15, 1949, ch. 695, § 4, 63 Stat. 880; Aug. 17, 1950, ch. 729, §§ 5–7, 64 Stat. 457.

Section 12B of the Federal Reserve Act was withdrawn from the Federal Reserve Act and made a separate Act by section 1 of act Sept. 21, 1950, and set out as this chapter.

PRIOR PROVISIONS

Section is derived from subsec. (a) of former section 264 of this title. See Codification note above.

AMENDMENTS

1993—Pub. L. 103–204 inserted ''Federal Deposit Insurance Corporation'' as section catchline, redesignated existing provisions as subsec. (a), inserted heading, and substituted ''There is hereby established'' for ''There is hereby created'', and added subsec. (b).

1989—Pub. L. 101–73 inserted ''and savings associations'' after ''banks''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 22(b) of Pub. L. 103–204 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on July 1, 1995.''

SHORT TITLE OF *2000* AMENDMENT

Pub. L. 106–569, title XII, § 1200, Dec. 27, 2000, 114 Stat. 3032, provided that: ''This title [enacting sections 215a–2, 215a–3, and 4805a of this title, amending sections 11, 71 to 72, 83, 215b, 1426, 1464, 1467a, 1817, 1818, 1821, 1828, 1831n, and 3102 of this title, repealing sections 51, 1465, and 1831f–1 of this title, enacting provisions set out as a note under section 1817 of this title, and amending provisions set out as a note under section 1828 of this title] may be cited as the 'Financial Regulatory Relief and Economic Efficiency Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–102, § 1(a), Nov. 12, 1999, 113 Stat. 1338, provided that: ''This Act [see Tables for classification] may be cited as the 'Gramm-Leach-Bliley Act'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–277, div. H, § 1, Oct. 21, 1998, 112 Stat. 2681–854, provided that: ''This Division [amending section 1828 of this title] may be cited as the 'Depository Institution-GSE Affiliation Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENTS

Pub. L. 105–24, § 1, July 3, 1997, 111 Stat. 238, provided that: ''This Act [amending sections 36 and 1831a of this title and enacting provisions set out as a note under section 1831a of this title] may be cited as the 'Riegle-Neal Amendments Act of 1997'.''

Pub. L. 105–18, title V, § 50001, June 12, 1997, 111 Stat. 211, provided that: ''This title [enacting provisions set out as notes under this section and sections 1828, 1831*o*, and 4008 of this title] may be cited as the 'Depository Institutions Disaster Relief Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title II, § 2701, Sept. 30, 1996, 110 Stat. 3009–479, provided that: ''This subtitle [subtitle G (§§ 2701–2711) of title II of div. A of Pub. L. 104–208 amending sections 24, 338a, 347b, 1431, 1441 to 1441b, 1464, 1467a, 1723i, 1735f–14, 1813, 1815 to 1817, 1821, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831*o*, 1833a, 1834, 1841, and 3341 of this title and section 905 of Title 2, The Congress, repealing section 1831h of this title, and enacting provisions set out as notes under sections 1441, 1817, and 1821 of this title and section 162 of Title 26, Internal Revenue Code] may be cited as the 'Deposit Insurance Funds Act of 1996'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–328, § 1(a), Sept. 29, 1994, 108 Stat. 2338, provided that: ''This Act [enacting sections 43, 215a–1, 1831u, and 1835a of this title, amending sections 30, 36, 215, 215a, 215b, 1441a, 1462a, 1820, 1821, 1828, 1831a, 1831r–1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacting provisions set out as notes under this section, sections 215, 1828, 3104, 3105, and 3107 of this title, section 1927 of Title 7, and section 5112 of Title 31, Money and Finance, and amending provisions set out as notes under this section and sections 5111 and 5112 of Title 31] may be cited as the 'Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–76, § 1, Aug. 12, 1993, 107 Stat. 752, provided that: ''This Act [enacting provisions set out as notes under this section and sections 1828, 1831*o*, and 4008 of this title] may be cited as the 'Depository Institutions Disaster Relief Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–550, title XV, § 1500, Oct. 28, 1992, 106 Stat. 4044, provided that: ''This title [see Tables for classification] may be cited as the 'Annunzio-Wylie Anti-Money Laundering Act'.''

Pub. L. 102–485, § 1, Oct. 23, 1992, 106 Stat. 2771, provided that: ''This Act [enacting sections 338a and 3352 of this title, amending section 24 of this title, and enacting provisions set out as notes under this section and sections 1811, 1828, 1831*o*, and 4008 of this title] may be cited as the 'Depository Institutions Disaster Relief Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–242, § 1(a), Dec. 19, 1991, 105 Stat. 2236, as amended by Pub. L. 102–550, title XVI, § 1601, Oct. 28, 1992, 106 Stat. 4075, provided that: ''This Act [see Tables for classification] may be cited as the 'Federal Deposit Insurance Corporation Improvement Act of 1991'.''

Pub. L. 102–242, title II, § 231, Dec. 19, 1991, 105 Stat. 2308, provided that: ''This subtitle [subtitle C (§§ 231–234) of title II of Pub. L. 102–242, enacting sections 1834, 1834a, and 1834b of this title and amending section 1817 of this title] may be cited as the 'Bank Enterprise Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–508, title II, § 2001, Nov. 5, 1990, 104 Stat. 1388–14, provided that: ''This Act [probably means this subtitle, which is subtitle A (§§ 2001–2005) of title II of Pub. L. 101–508, amending sections 1817 and 1824 of this title] may be cited as the 'FDIC Assessment Rate Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1(a) of Pub. L. 101–73 provided that: ''This Act [see Tables for classification] may be cited as the 'Financial Institutions Reform, Recovery, and Enforcement Act of 1989'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–86, title V, § 501, Aug. 10, 1987, 101 Stat. 623, provided that: ''This title [enacting sections 1439–1 and 1772b of this title, amending sections 481, 1726, 1727, 1729, 1730a, 1785, 1786, 1813, 1821, 1823, 1828, 1842, 1843, and 1849 of this title and sections 905 and 906 of Title 2, The Congress, enacting provisions set out as a note under section 1464 of this title, amending provisions set out as a note under section 1729 of this title, and repealing provisions set out as a note under section 1464 of this title] may be cited as the 'Financial Institutions Emergency Acquisitions Amendments of 1987'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–320, title I, § 101, Oct. 15, 1982, 96 Stat. 1469, provided that: ''This title [amending sections 1431, 1436, 1437, 1462, 1464, 1725, 1726, 1727, 1728, 1729, 1730, 1730a, 1785, 1786, 1813, 1814, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1831c, 1841, 1842, and 1843 of this title and enacting provisions set out as a note under section 1464 of this title] may be cited as the 'Deposit Insurance Flexibility Act'.''

Pub. L. 97–320, title II, § 201, Oct. 15, 1982, 96 Stat. 1489, provided that: ''This title [amending sections 1464, 1726, 1729, and 1823 of this title and enacting provisions set out as notes under section 1823 of this title] may be cited as the 'Net Worth Certificate Act'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–110, title I, § 101, Dec. 26, 1981, 95 Stat. 1513, provided that: ''This title [amending sections 1813, 1817, and 1821 of this title] may be cited as the 'International Banking Facility Deposit Insurance Act'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–630, title VI, § 601, Nov. 10, 1978, 92 Stat. 3683, provided that: ''This title [amending section 1817 of this title] may be cited as the 'Change in Bank Control Act of 1978'.''

SHORT TITLE

Section 1 of act Sept. 21, 1950, provided: ''That section 12B of the Federal Reserve Act, as amended, is hereby withdrawn as a part of that Act and is made a separate Act [enacting this chapter] to be known as the 'Federal Deposit Insurance Act'.''

SEPARABILITY

Pub. L. 102–242, title IV, § 481, Dec. 19, 1991, 105 Stat. 2388, provided that: ''If any provision of this Act [see Short Title of 1991 Amendment note above], or any application of any provision of this Act to any person or circumstance, is held invalid, the remainder of the Act, and the application of any remaining provision of the Act to any other person or circumstance, shall not be affected by such holding.''

Section 1221 of Pub. L. 101–73 provided that: ''If any provision of this Act [see Short Title of 1989 Amend-

ment note above] or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.''

CONSTRUCTION OF 1999 AMENDMENTS

Pub. L. 106–102, title II, § 210, Nov. 12, 1999, 113 Stat. 1396, provided that: ''Nothing in this Act [see Short Title of 1999 Amendment note above] shall supersede, affect, or otherwise limit the scope and applicability of the Commodity Exchange Act (7 U.S.C. 1 et seq.).''

Pub. L. 106–102, title VII, § 714, Nov. 12, 1999, 113 Stat. 1470, provided that: ''Nothing in this Act [see Short Title of 1999 Amendment note above] shall be construed to repeal any provision of the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.].''

CONSTRUCTION OF 1997 AMENDMENT

Pub. L. 105–18, title V, § 50006, June 12, 1997, 111 Stat. 213, provided that: ''No provision of this title [see Short Title of 1997 Amendments note above] shall be construed as limiting the authority of any department or agency under any other provision of law.''

CONSTRUCTION OF 1994 AMENDMENT

Pub. L. 103–328, title I, § 111, Sept. 29, 1994, 108 Stat. 2365, provided that: ''No provision of this title [enacting sections 43, 215a–1, 1831u, and 1835a of this title, amending sections 30, 36, 215, 215a, 215b, 1462a, 1820, 1828, 1831a, 1831r–1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacting provisions set out as notes under this section, sections 215, 1828, 3104, 3105, and 3107 of this title and section 1927 of Title 7, and amending provisions set out as a note under this section] and no amendment made by this title to any other provision of law shall be construed as affecting in any way—

''(1) the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any such bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law;

''(2) the right of any State, or any political subdivision of any State, to impose or maintain a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax in accordance with section 3124 of title 31, United States Code; or

''(3) the applicability of section 5197 of the Revised Statutes [section 85 of this title] or section 27 of the Federal Deposit Insurance Act [section 1831d of this title].''

CONSTRUCTION OF 1993 AMENDMENTS

Pub. L. 103–76, § 7, Aug. 12, 1993, 107 Stat. 755, provided that: ''Nothing in this Act [see Short Title of 1993 Amendment note above] limits the authority of any department or agency under any other provision of law.''

CONSTRUCTION OF 1992 AMENDMENTS

Pub. L. 102–485, § 8, Oct. 23, 1992, 106 Stat. 2775, provided that: ''Nothing in this Act [see Short Title of 1992 Amendments note above] limits the authority of any department or agency under any other provision of law.''

YEAR 2000 READINESS FOR FINANCIAL INSTITUTIONS

Pub. L. 105–164, § 2, Mar. 20, 1998, 112 Stat. 32, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the Year 2000 computer problem poses a serious challenge to the American economy, including the Nation's banking and financial services industries;

''(2) thousands of banks, savings associations, and credit unions rely heavily on internal information technology and computer systems, as well as outside service providers, for mission-critical functions, such as check clearing, direct deposit, accounting, automated teller machine networks, credit card processing, and data exchanges with domestic and international borrowers, customers, and other financial institutions; and

''(3) Federal financial regulatory agencies must have sufficient examination authority to ensure that the safety and soundness of the Nation's financial institutions will not be at risk.

''(b) DEFINITIONS.—For purposes of this section—

''(1) the terms 'depository institution' and 'Federal banking agency' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813];

''(2) the term 'Federal home loan bank' has the same meaning as in section 2 of the Federal Home Loan Bank Act [12 U.S.C. 1422];

''(3) the term 'Federal reserve bank' means a reserve bank established under the Federal Reserve Act [12 U.S.C. 221 et seq.];

''(4) the term 'insured credit union' has the same meaning as in section 101 of the Federal Credit Union Act [12 U.S.C. 1752]; and

''(5) the term 'Year 2000 computer problem' means, with respect to information technology, any problem which prevents such technology from accurately processing, calculating, comparing, or sequencing date or time data—

''(A) from, into, or between—

''(i) the 20th and 21st centuries; or

''(ii) the years 1999 and 2000; or

''(B) with regard to leap year calculations.

''(c) SEMINARS AND MODEL APPROACHES TO YEAR 2000 COMPUTER PROBLEM.—

''(1) SEMINARS.—

''(A) IN GENERAL.—Each Federal banking agency and the National Credit Union Administration Board shall offer seminars to all depository institutions and insured credit unions under the jurisdiction of such agency on the implication of the Year 2000 computer problem for—

''(i) the safe and sound operations of such depository institutions and credit unions; and

''(ii) transactions with other financial institutions, including Federal reserve banks and Federal home loan banks.

''(B) CONTENT AND SCHEDULE.—The content and schedule of seminars offered pursuant to subparagraph (A) shall be determined by each Federal banking agency and the National Credit Union Administration Board taking into account the resources and examination priorities of such agency.

''(2) MODEL APPROACHES.—

''(A) IN GENERAL.—Each Federal banking agency and the National Credit Union Administration Board shall make available to each depository institution and insured credit union under the jurisdiction of such agency model approaches to common Year 2000 computer problems, such as model approaches with regard to project management, vendor contracts, testing regimes, and business continuity planning.

''(B) VARIETY OF APPROACHES.—In developing model approaches to the Year 2000 computer problem pursuant to subparagraph (A), each Federal banking agency and the National Credit Union Administration Board shall take into account the need to develop a variety of approaches to correspond to the variety of depository institutions or credit unions within the jurisdiction of the agency.

''(3) COOPERATION.—In carrying out this section, the Federal banking agencies and the National Credit Union Administration Board may cooperate and coordinate their activities with each other, the Financial Institutions Examination Council, and appropriate organizations representing depository institutions and credit unions.''

STUDY AND REPORT ON UNITED STATES FINANCIAL SERVICES SYSTEM

Pub. L. 103–328, title II, § 210, Sept. 29, 1994, 108 Stat. 2379, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of the Treasury (hereafter in this section referred to as the 'Secretary') shall, after consultation with the Advisory Commission on Financial Services established under subsection (b), and consultation in accordance with paragraph (3), conduct a study of matters relating to the strengths and weaknesses of the United States financial services system in meeting the needs of the system's users, including the needs of—

''(A) individual consumers and households;

''(B) communities;

''(C) agriculture;

''(D) small-, medium-, and large-sized businesses;

''(E) governmental and nonprofit entities; and

''(F) exporters and other users of international financial services.

''(2) MATTERS STUDIED.—The study required under paragraph (1) shall include consideration of—

''(A) the changes underway in the national and international economies and the financial services industry, and how those changes affect the financial services system's ability to efficiently meet the needs of the national economy and the system's users during the next 10 years and beyond; and

''(B) the adequacy of existing statutes and regulations, and the existing regulatory structure, to meet the needs of the financial services system's users effectively, efficiently, and without unfair, anticompetitive, or discriminatory practices.

''(3) CONSULTATION.—Consultation in accordance with this paragraph means consultation with—

''(A) the Board of Governors of the Federal Reserve System;

''(B) the Commodity Futures Trading Commission;

''(C) the Comptroller of the Currency;

''(D) the Director of the Office of Thrift Supervision;

''(E) the Federal Deposit Insurance Corporation;

''(F) the Secretary of the Department of Housing and Urban Development;

''(G) the Securities and Exchange Commission;

''(H) the Director of the Congressional Budget Office; and

''(I) the Comptroller General of the United States.

''(b) ADVISORY COMMISSION ON FINANCIAL SERVICES.—

''(1) ESTABLISHMENT.—There is established the Advisory Commission on Financial Services (hereafter in this section referred to as the 'Advisory Commission').

''(2) MEMBERSHIP OF COMMISSION.—The Advisory Commission—

''(A) shall consist of not less than 9 nor more than 14 members appointed by the Secretary from among individuals—

''(i) who are—

''(I) users of the financial services system; or

''(II) experts in finance or on the financial services system; and

''(ii) who are not employees of the Federal Government; and

''(B) shall include representatives of business, agriculture, and consumers.

''(3) CHAIRPERSON.—The Secretary or the Secretary's designee shall serve as Chairperson of the Advisory Commission.

''(4) TRAVEL EXPENSES.—Members of the Advisory Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in performing services for the Advisory Commission.

''(5) TERMINATION.—The Advisory Commission shall terminate 30 days after the date of submission of the report required under subsection (d).

''(c) RECOMMENDATIONS.—Based on the results of the study conducted under subsection (a), the Secretary shall develop such recommendations as may be appropriate for changes in statutes, regulations, and policies to improve the operation of the financial services system, including changes to better—

''(1) meet the needs of, and assure access to the system for, current and potential users;

''(2) promote economic growth;

''(3) protect consumers;

''(4) promote competition and efficiency;

''(5) avoid risk to the taxpayers;

''(6) control systemic risk; and

''(7) eliminate discrimination.

''(d) REPORT.—Not later than 15 months after the date of enactment of this Act [Sept. 29, 1994], the Secretary shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report describing the study conducted under subsection (a) and any recommendations developed under subsection (c).''

STUDY AND REPORT ON DEPOSITORY INSTITUTIONS DISASTER RELIEF ACTS OF 1992 AND 1993

Pub. L. 103–76, § 5, Aug. 12, 1993, 107 Stat. 754, directed Secretary of the Treasury, after consultation with appropriate Federal banking agencies to conduct a study that (1) examined how agencies and entities granted authority by Depository Institutions Disaster Relief Act of 1992 and by this Act have exercised such authority, (2) evaluated the utility of such Acts in facilitating recovery from disasters consistent with safety and soundness of depository institutions, and (3) contained recommendations with respect to whether the authority granted by this Act should be made permanent, and, not later than 18 months after Aug. 12, 1993, submit to Congress a report on the results of the study.

FEASIBILITY STUDY ON AUTHORIZING INSURED AND UNINSURED DEPOSIT ACCOUNTS

Pub. L. 102–242, title III, § 321, Dec. 19, 1991, 105 Stat. 2370, directed Federal Deposit Insurance Corporation to study the feasibility of authorizing insured depository institutions to offer both insured and uninsured deposit accounts to customers, specified factors to be considered in conducting the study, and directed Corporation, before the end of the 6-month period beginning on Dec. 19, 1991, to submit a report to Congress containing the Corporation's findings and conclusions with respect to the study and any recommendations for legislative or administrative action the Corporation determined to be appropriate.

PRIVATE REINSURANCE STUDY

Pub. L. 102–242, title III, § 322, Dec. 19, 1991, 105 Stat. 2370, directed Board of Directors of Federal Deposit Insurance Corporation, in consultation with Secretary of the Treasury and individuals from the private sector with expertise in private insurance, private reinsurance, depository institutions, or economics, to conduct a study of the feasibility of establishing a private reinsurance system, such study to include a demonstration project consisting of a simulation, by a sample of private reinsurers and insured depository institutions, of the activities required for a private reinsurance system, with a report to Congress on the study before the end of the 18-month period beginning on Dec. 19, 1991.

PURPOSES OF 1989 AMENDMENT

Section 101 of Pub. L. 101–73 provided that: ''The purposes of this Act [see Short Title of 1989 Amendment note above] are as follows:

''(1) To promote, through regulatory reform, a safe and stable system of affordable housing finance.

''(2) To improve the supervision of savings associations by strengthening capital, accounting, and other supervisory standards.

''(3) To curtail investments and other activities of savings associations that pose unacceptable risks to the Federal deposit insurance funds.

''(4) To promote the independence of the Federal Deposit Insurance Corporation from the institutions the deposits of which it insures, by providing an independent board of directors, adequate funding, and appropriate powers.

''(5) To put the Federal deposit insurance funds on a sound financial footing.

''(6) To establish an Office of Thrift Supervision in the Department of the Treasury, under the general oversight of the Secretary of the Treasury.

''(7) To establish a new corporation, to be known as the Resolution Trust Corporation, to contain, manage, and resolve failed savings associations.

''(8) To provide funds from public and private sources to deal expeditiously with failed depository institutions.

''(9) To strengthen the enforcement powers of Federal regulators of depository institutions.

''(10) To strengthen the civil sanctions and criminal penalties for defrauding or otherwise damaging depository institutions and their depositors.''

STUDIES OF FEDERAL DEPOSIT INSURANCE, BANKING SERVICES, AND SAFETY AND SOUNDNESS OF GOVERNMENT-SPONSORED ENTERPRISES

Title X of Pub. L. 101–73, as amended by Pub. L. 103–328, title I, § 108(a), Sept. 29, 1994, 108 Stat. 2361; Pub. L. 104–208, div. A, title II, § 2608, Sept. 30, 1996, 110 Stat. 3009–474, provided that:

''SEC. 1001. STUDY OF FEDERAL DEPOSIT INSURANCE SYSTEM.

''(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Thrift Supervision, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the National Credit Union Administration Board, the Director of the Office of Management and Budget, and individuals from the private sector, shall conduct a study of the Federal deposit insurance system.

''(b) TOPICS.—As part of the study required under subsection (a), the Secretary of the Treasury shall investigate, review, and evaluate the following:

''(1) The feasibility of establishing a deposit insurance premium rate structure which would take into account, on an institution-by-institution basis—

''(A) asset quality risk;

''(B) interest rate risk;

''(C) quality of management; and

''(D) profitability and capital.

''(2) Incentives for market discipline, including the advantages of—

''(A) limiting each depositor to 1 insured account per institution;

''(B) reducing the amount insured, or providing for a graduated decrease in the percentage of the amounts deposited which are insured as the amounts deposited increase;

''(C) combining Federal with private insurance in order to bring the market discipline of private insurance to bear on the management of the depository institution; and

''(D) ensuring, by law or regulation, that on the closing of any insured depository institution, the appropriate Federal insurance fund will honor only its explicit liabilities, and will never make good any losses on deposits not explicitly covered by Federal deposit insurance.

''(3) The scope of deposit insurance coverage and its impact on the liability of the insurance fund.

''(4) The feasibility of market value accounting, assessments on foreign deposits, limitations on brokered deposits, the addition of collateralized borrowings to the deposit insurance base, and multiple insured accounts.

''(5) The impact on the deposit insurance funds of varying State and Federal bankruptcy exemptions and the feasibility of—

''(A) uniform exemptions;

''(B) limits on exemptions when necessary to repay obligations owed to federally insured depository institutions; and

''(C) requiring borrowers from federally insured depository institutions to post a personal or corporate bond when obtaining a mortgage on real property.

''(6) Policies to be followed with respect to the recapitalization or closure of insured depository institutions whose capital is depleted to, or near the point of, insolvency.

''(7) The efficiency of housing subsidies through the Federal home loan bank system.

''(8) Alternatives to Federal deposit insurance.

''(9) The feasibility of developing and administering, through the appropriate Federal banking agency, an examination of the principles and techniques of risk management and the application of such principles and techniques to the management of insured institutions.

''(10) The adequacy of capital of insured credit unions and the National Credit Union Share Insurance Fund, including whether the supervision of such fund should be separated from the other functions of the National Credit Union Administration.

''(11) The feasibility of requiring, by statute or other means, that—

''(A) independent auditors and accountants of a depository institution report the results of any audit of the institution to the relevant regulatory agency or agencies;

''(B) a regulator share reports on a depository institution with the institution's independent auditors and accountants; and

''(C) independent auditors and accountants participate in conferences between the regulator and the depository institution.

''(12) The feasibility of adopting regulations which are the same as or similar to the provisions of England's Banking Act, 1987, ch. 22 (4 Halsbury's Statutes of England and Wales 527–650 (1987)), enacted on May 15, 1987, relating to the Bank of England's relationship with auditors and reporting accountants (including sections 8, 39, 41, 45, 46, 47, 82, 83, 85, and 94 of such Act).

''(c) FINAL REPORT.—Not later than the close of the 18-month period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Secretary of the Treasury shall submit to the Congress a final report containing a detailed statement of findings made, and conclusions drawn from, the study conducted under this section, including such recommendations for administrative and legislative action as the Secretary determines to be appropriate.

''SEC. 1002. SURVEY OF BANK FEES AND SERVICES.

''(a) ANNUAL SURVEY REQUIRED.—The Board of Governors of the Federal Reserve System shall obtain a sample, which is representative by geographic location and size of the institution, of—

''(1) certain retail banking services provided by insured depository institutions; and

''(2) the fees, if any, which are imposed by such institutions for providing any such service, including fees imposed for not sufficient funds, deposit items returned, and automated teller machine transactions.

''(b) ANNUAL REPORT TO CONGRESS REQUIRED.—

''(1) PREPARATION.—The Board of Governors of the Federal Reserve System shall prepare a report of the results of each survey conducted pursuant to subsection (a).

''(2) CONTENTS OF THE REPORT.—Each report prepared pursuant to paragraph (1) shall include—

''(A) a description of any discernible trend, in the Nation as a whole, in each of the 50 States, and in each consolidated metropolitan statistical area or primary metropolitan statistical area (as defined by the Director of the Office of Management and Budget), in the cost and availability of retail bank-

ing services (including fees imposed for providing such services), that delineates differences between insured depository institutions on the basis of both the size of the institution and any engagement of the institution in multistate activity; and

''(B) a description of the correlation, if any, among the following factors:

''(i) An increase or decrease in the amount of any deposit insurance premium assessed by the Federal Deposit Insurance Corporation against insured depository institutions.

''(ii) An increase or decrease in the amount of the fees imposed by such institutions for providing retail banking services.

''(iii) A decrease in the availability of such services.

''(3) SUBMISSION TO CONGRESS.—The Board of Governors of the Federal Reserve System shall submit an annual report to the Congress not later than September 1, 1995, and not later than June 1 of each subsequent year.

''SEC. 1003. GENERAL ACCOUNTING OFFICE STUDY.

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of deposit insurance issues raised by section 1001 emphasizing in particular—

''(1) analysis of the policy considerations affecting the scope of deposit insurance coverage;

''(2) evaluation of the risks associated with bank insurance contracts both as to the issuing institution and the deposit insurance funds; and

''(3) the effect of proposed changes in the definition of 'deposit' on—

''(A) market discipline; and

''(B) the ability of other participants in capital markets to raise funds.

''(b) REPORT.—Not later than the close of the 18-month period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Comptroller General shall submit to the Congress the results of the study required by subsection (a).

''SEC. 1004. STUDY REGARDING CAPITAL REQUIREMENTS FOR GOVERNMENT-SPONSORED ENTERPRISES.

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the risks undertaken by all government-sponsored enterprises and the appropriate level of capital for such enterprises consistent with—

''(1) the financial soundness and stability of the government-sponsored enterprises;

''(2) minimizing any potential financial exposure of the Federal Government; and

''(3) minimizing any potential impact on borrowing of the Federal Government.

''(b) CONSULTATION AND COOPERATION WITH OTHER AGENCIES.—The Comptroller General shall determine the structure and methodology of the study under this section in consultation with and with the cooperation of the Secretary of Agriculture and the Farm Credit Administration (with respect to the Farm Credit Banks, the Banks for Cooperatives, and the Federal Agricultural Mortgage Corporation), the Secretary of Education (with respect to the Student Loan Marketing Association and the College Construction Loan Corporation), the Secretary of Housing and Urban Development (with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation), and the government-sponsored enterprises.

''(c) ACCESS TO RELEVANT INFORMATION.—Each government-sponsored enterprise shall provide full and prompt access to the Comptroller General to its books and records and shall promptly provide any other information requested by the Comptroller General. In conducting the study under this section, the Comptroller General may request information from, or the assistance of, any department or agency of the Federal Government that is authorized by law to supervise or approve any of the activities of any government-sponsored enterprise.

''(d) SPECIFIC REQUIREMENTS.—The study shall examine and evaluate—

''(1) the degrees and types of risks that are undertaken by the government-sponsored enterprises in the course of their operations, including credit risk, interest rate risk, management and operational risk, and business risk;

''(2) the most appropriate method or methods for quantifying the types of risks undertaken by the government-sponsored enterprises;

''(3) the actual level of risk that exists with respect to each government-sponsored enterprise, which shall take into account factors including the volume and type of securities outstanding that are issued or guaranteed by each government-sponsored enterprise and the extent of off-balance sheet expense of each government-sponsored enterprise;

''(4) the appropriateness of applying a risk-based capital standard to each government-sponsored enterprise, taking into account the nature of the business each government-sponsored enterprise conducts;

''(5) the costs and benefits to the public from application of a risk-based capital standard to the government-sponsored enterprises and the impact of such a standard on the capability of each government-sponsored enterprise to carry out its purpose under law;

''(6) the impact, if any, of the operation of the government-sponsored enterprises on borrowing of the Federal Government;

''(7) the overall level of capital appropriate for each of the government-sponsored enterprises; and

''(8) the quality and timeliness of information currently available to the public and the Federal Government concerning the extent and nature of the activities of government-sponsored enterprises and the financial risk associated with such activities.

''(e) REPORTS TO CONGRESS.—The Comptroller General shall submit to the Congress 2 reports regarding the study under this section. The first report shall be submitted to the Congress not later than 9 months after the date of the enactment of this Act [Aug. 9, 1989] and the second report shall be submitted to the Congress not later than 21 months after the date of the enactment of this Act. Each report shall set forth—

''(1) the results of the study under this section;

''(2) any recommendations of the Comptroller General with respect to appropriate capital standards for each government-sponsored enterprise;

''(3) any recommendations of the Comptroller General with respect to information that, in the determination of the Comptroller General, should be provided to the Congress concerning—

''(A) the extent and nature of the activities of the government-sponsored enterprises; and

''(B) the nature of any periodic reports that the Comptroller General believes should be submitted to the Congress relating to the capital condition and operations of the government-sponsored enterprises; and

''(4) any recommendations and opinions of the Secretary of Agriculture, the Secretary of Education, the Secretary of Housing and Urban Development, and the Secretary of the Treasury regarding the report, to the extent that the recommendations and views of such officers differ from the recommendations and opinions of the Comptroller General.

''(f) DEFINITION.—For purposes of this section, the term 'government-sponsored enterprises' means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the College Construction Loan Insurance Corporation, the Student Loan Marketing Association.''

[Pub. L. 103–328, title I, §108(b), Sept. 29, 1994, 108 Stat. 2362, provided that: ''The requirements of subsection (a) [amending section 1002 of Pub. L. 101–73, set out above] shall not apply after the end of the 7-year

period beginning on the date of enactment of this Act [Sept. 29, 1994].'']

EXPANSION OF USE OF UNDERUTILIZED MINORITY BANKS, WOMEN'S BANKS, AND LOW-INCOME CREDIT UNIONS

Section 1204 of Pub. L. 101–73 provided that:

''(a) CONSULTATION ON EXPANDED USE.—The Secretary of the Treasury shall consult with the appropriate Federal banking agencies and the National Credit Union Administration Board on methods for increasing the use of underutilized minority banks, women's banks, and limited income credit unions as depositaries or financial agents of Federal agencies.

''(b) REPORT TO CONGRESS.—The Secretary of the Treasury shall include, in the 1st annual report submitted to the Congress under section 331(a) of title 31, United States Code, after the completion of the consultation required by subsection (a), a report of the actions taken by the Secretary to increase the use of underutilized minority banks, women's banks, and limited income credit unions as depositaries or financial agents of Federal agencies.

''(c) DEFINITIONS.—For purposes of this section:

''(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given to such term in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)].

''(2) MINORITY BANK.—The term 'minority bank' means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)(i), (ii), (iii)]—

''(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

''(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

''(3) MINORITY.—The term 'minority' means any Black American, Native American, Hispanic American, or Asian American.

''(4) LOW-INCOME CREDIT UNION.—The term 'low-income credit union' means any depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act which serves predominately low-income members (as defined by the National Credit Union Administration Board pursuant to section 101(5) of the Federal Credit Union Act [12 U.S.C. 1752(5)]).

''(5) WOMEN'S BANK.—The term 'women's bank' means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

''(A) more than 50 percent of the outstanding shares of which are held by 1 or more women;

''(B) a majority of the directors on the board of directors of which are women; and

''(C) a significant percentage of senior management positions of which are held by women.''

SMALL INVESTOR PARTICIPATION IN UNITED STATES GOVERNMENT SECURITIES OFFERINGS; STUDY BY SECRETARY OF THE TREASURY

Section 1207 of Pub. L. 101–73 provided that: ''Not later than the close of the 18-month period beginning on the date of the enactment of this Act [Aug. 9, 1989], the Secretary of the Treasury shall conduct a study and report to the Congress on—

''(1) whether, and to what extent, the issuance of securities by the United States Government in small denominations benefits small investors, increases the participation of small investors in United States Government securities offerings, and promotes savings and thrift by the average United States taxpayer; and

''(2) additional measures the Secretary recommends be taken to expand the availability of securities issued by the United States Government to benefit small investors, increase their participation in United States Government securities offerings, and to promote savings and thrift by the average United States taxpayer.''

EXPENDITURE OF TAXPAYER MONEY ONLY FOR DEPOSIT INSURANCE PURPOSES

Section 1208 of Pub. L. 101–73 provided that: ''Funds appropriated to the Secretary of the Treasury pursuant to an authorization contained in this Act [see Short Title of 1989 Amendment note above], and any amount authorized to be borrowed from the Secretary of the Treasury by any entity pursuant to this Act, may only be used as permitted by law, and may not otherwise be used for making any payment to any shareholder in, or creditor to, any insured depository institution.''

STUDIES OF RELATIONSHIP BETWEEN PUBLIC DEBT AND ACTIVITIES OF GOVERNMENT-SPONSORED ENTERPRISES

Section 1404 of Pub. L. 101–73 provided that:

''(a) IN GENERAL.—In order to better manage the bonded indebtedness of the United States, the Secretary shall conduct 2 annual studies to assess the financial safety and soundness of the activities of all Government-sponsored enterprises and the impact of their operations on Federal borrowing.

''(b) ACCESS TO RELEVANT INFORMATION.—

''(1) INFORMATION FROM GSE'S.—Each Government-sponsored enterprise shall provide full and prompt access to the Secretary to its books and records, and shall promptly provide any other information requested by the Secretary.

''(2) INFORMATION FROM SUPERVISORY AGENCIES.—In conducting the studies under this section, the Secretary may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of any Government-sponsored enterprise.

''(3) CONFIDENTIALITY OF INFORMATION.—

''(A) IN GENERAL.—The Secretary shall determine and maintain the confidentiality of any book, record, or information made available under this subsection in a manner generally consistent with the level of confidentiality established for the material by the Government-sponsored enterprise involved.

''(B) EXEMPTION FROM PUBLIC DISCLOSURE REQUIREMENTS.—The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, with respect to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A).

''(C) PENALTY FOR UNAUTHORIZED DISCLOSURE.—Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

''(i) by virtue of his employment or official position, he has possession of or access to any book, record, or information made available under this subsection and determined by the Secretary to be confidential under subparagraph (A); and

''(ii) he discloses the material in any manner other than—

''(I) to an officer or employee of the Department of the Treasury; or

''(II) pursuant to the exceptions set forth in such section 1906.

''(c) ASSESSMENT OF RISK.—In assessing the financial safety and soundness of the activities of Government-sponsored enterprises, and the impact of their activities on Federal borrowing, the Secretary shall quantify the risks associated with each Government-sponsored enterprise. In quantifying such risks, the Secretary shall determine the volume and type of securities outstanding which are issued or guaranteed by each Government-sponsored enterprise, the capitalization of each Government-sponsored enterprise, and the degree of risk involved in the operations of each Government-sponsored enterprise due to factors such as credit risk, interest rate risk, management and operations risk, and business risk. The Secretary shall also report on the quality and timeliness of information currently available to the public and the Federal Government

concerning the extent and nature of the activities of Government-sponsored enterprises and the financial risk associated with such activities.

''(d) REPORTS TO CONGRESS.—The Secretary shall submit to the Congress—

''(1) by May 15, 1990, a report setting forth the results of the 1st annual study conducted under this section; and

''(2) by May 15, 1991, a report setting forth the results of the 2nd annual study conducted under this section.

''(e) DEFINITIONS.—For purposes of this section:

''(1) GOVERNMENT-SPONSORED ENTERPRISE.—The term 'Government-sponsored enterprise' means—

''(A) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank System, the Farm Credit Banks, the Banks for Cooperatives, the Federal Agricultural Mortgage Corporation, the Student Loan Marketing Association, the College Construction Loan Insurance Association, and any of their affiliated or member institutions; and

''(B) any other Government-sponsored enterprise, as designated by the Secretary.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate.''

§ 1812. Management

(a) Board of Directors

(1) In general

The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency;

(B) 1 of whom shall be the Director of the Office of Thrift Supervision; and

(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.

(2) Political affiliation

After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

(b) Chairperson and Vice Chairperson

(1) Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) Vice Chairperson

1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) Acting Chairperson

In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(c) Terms

(1) Appointed members

Each appointed member shall be appointed for a term of 6 years.

(2) Interim appointments

Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) Continuation of service

The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(d) Vacancy

(1) In general

Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) Acting officials may serve

In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Office of Thrift Supervision and pending the appointment of a successor, or during the absence or disability of the Comptroller or such Director, the acting Comptroller of the Currency or the acting Director of the Office of Thrift Supervision, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

(e) Ineligibility for other offices

(1) Postservice restriction

(A) In general

No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

(i) the time such member is in office; and

(ii) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

(B) Exception for members who serve full term

The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) Restriction during service

No member of the Board of Directors may—

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

(3) Certification

Upon taking office, each member of the Board of Directors shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.

(f) Status of employees

(1) In general

A director, member, officer, or employee of the Corporation has no liability under the Se-

curities Act of 1933 [15 U.S.C. 77a et seq.] with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

(2) "Employee of the Corporation" defined

For purposes of this subsection, the term ''employee of the Corporation'' includes any employee of the Office of the Comptroller of the Currency or of the Office of Thrift Supervision who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.

(3) Effect on other law

This subsection does not affect—

(A) any other immunities and protections that may be available to such person under applicable law with respect to such transactions, or

(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

(Sept. 21, 1950, ch. 967, § 2[2], 64 Stat. 873; Pub. L. 86–230, § 19, Sept. 8, 1959, 73 Stat. 460; Pub. L. 98–181, title VII, § 702(a), Nov. 30, 1983, 97 Stat. 1267; Pub. L. 101–73, title II, § 203(a), Aug. 9, 1989, 103 Stat. 188; Pub. L. 102–18, title I, § 103(b), Mar. 23, 1991, 105 Stat. 60; Pub. L. 104–208, div. A, title II, § 2243, Sept. 30, 1996, 110 Stat. 3009–419.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (f)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

PRIOR PROVISIONS

Section is derived from subsec. (b) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (a)(1)(C). Pub. L. 104–208 inserted '', 1 of whom shall have State bank supervisory experience'' before period at end.

1991—Subsec. (f). Pub. L. 102–18 added subsec. (f).

1989—Pub. L. 101–73 amended section generally, designating existing provisions as subsecs. (a) to (e), and making other changes relating to the make-up and operation of the Board.

1983—Pub. L. 98–181 inserted provision that each such appointive member may continue to serve after the expiration of his term until a successor has been appointed and qualified.

1959—Pub. L. 86–230 provided for membership of Acting Comptroller of the Currency on Board of Directors during absence or disability of Comptroller instead of only during his absence from Washington.

TRANSITION PROVISION

Section 203(b) of Pub. L. 101–73 provided that:

''(1) CHAIRPERSON.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act [12 U.S.C. 1812], the Chairman of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [Aug. 9, 1989] may continue to serve as the Chairperson until the end of the term to which such Chairman was appointed.

''(2) MEMBERS.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act, the appointed member of the Board of Directors of the Federal Deposit Insurance Corporation on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 who is not the Chairman shall continue to serve in office until the earlier of—

''(A) the end of the term to which such member was appointed; or

''(B) February 28, 1993,

except that such member may continue to serve after the end of such term until a successor has been appointed and qualified.

''(3) APPOINTMENTS BEFORE MARCH 1, 1993.—Notwithstanding any provision of section 2 of the Federal Deposit Insurance Act, the term of any member appointed to the Board of Directors of the Federal Deposit Insurance Corporation before February 28, 1993 (including the term of any Chairperson), shall end on such date.''

COMPENSATION OF BOARD OF DIRECTORS

Compensation of Chairman and members of the Board, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

§ 1813. Definitions

As used in this chapter—

(a) DEFINITIONS OF BANK AND RELATED TERMS.—

(1) BANK.—The term ''bank''—

(A) means any national bank, State bank, and District bank, and any Federal branch and insured branch;

(B) includes any former savings association that—

(i) has converted from a savings association charter; and

(ii) is a Savings Association Insurance Fund member.

(2) STATE BANK.—The term ''State bank'' means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank),

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.

(3) STATE.—The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(4) DISTRICT BANK.—The term ''District bank'' means any State bank operating under the Code of Law of the District of Columbia.

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—

(1) SAVINGS ASSOCIATION.—The term ''savings association'' means—

(A) any Federal savings association;

(B) any State savings association; and

(C) any corporation (other than a bank) that the Board of Directors and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(2) FEDERAL SAVINGS ASSOCIATION.—The term ''Federal savings association'' means any Federal savings association or Federal savings bank which is chartered under section 1464 of this title.

(3) STATE SAVINGS ASSOCIATION.—The term ''State savings association'' means—

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2) of this section),

which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.

(c) DEFINITIONS RELATING TO DEPOSITORY INSTITUTIONS.—

(1) DEPOSITORY INSTITUTION.—The term ''depository institution'' means any bank or savings association.

(2) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.

(3) INSTITUTIONS INCLUDED FOR CERTAIN PURPOSES.—The term ''insured depository institution'' includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 1818 of this title.

(4) FEDERAL DEPOSITORY INSTITUTION.—The term ''Federal depository institution'' means any national bank, any Federal savings association, and any Federal branch.

(5) STATE DEPOSITORY INSTITUTION.—The term ''State depository institution'' means any State bank, any State savings association, and any insured branch which is not a Federal branch.

(d) DEFINITIONS RELATING TO MEMBER BANKS.—

(1) NATIONAL MEMBER BANK.—The term ''national member bank'' means any national bank which is a member of the Federal Reserve System.

(2) STATE MEMBER BANK.—The term ''State member bank'' means any State bank which is a member of the Federal Reserve System.

(e) DEFINITIONS RELATING TO NONMEMBER BANKS.—

(1) NATIONAL NONMEMBER BANK.—The term ''national nonmember bank'' means any national bank which—

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve System.

(2) STATE NONMEMBER BANK.—The term ''State nonmember bank'' means any State bank which is not a member of the Federal Reserve System.

(f) The term ''mutual savings bank'' means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

(g) SAVINGS BANK.—The term ''savings bank'' means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

(h) The term ''insured bank'' means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this chapter; and the term ''noninsured bank'' means any bank the deposits of which are not so insured.

(i) NEW BANK AND BRIDGE BANK DEFINED.—

(1) NEW BANK.—The term ''new bank'' means a new national bank, other than a bridge bank, organized by the Corporation in accordance with section 1821(m) of this title.

(2) BRIDGE BANK.—The term ''bridge bank'' means a new national bank organized by the Corporation in accordance with section 1821(n) of this title.

(j) The term ''receiver'' includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

(k) The term ''Board of Directors'' means the Board of Directors of the Corporation.

(*l*) The term ''deposit'' means—

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: *Provided*, That, without limiting the generality of the term ''money or its equivalent'', any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in ex-

change for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection.

(2) trust funds as defined in this chapter received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association.

(3) money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: *Provided*, That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.

(4) outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this chapter or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System; and

(C) any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of title 26.

(m) INSURED DEPOSIT.—

(1) IN GENERAL.—Subject to paragraph (2), the term ''insured deposit'' means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 1817(i) and 1821(a) of this title.

(2) In the case of any deposit in a branch of a foreign bank, the term ''insured deposit'' means an insured deposit as defined in paragraph (1) of this subsection which—

(A) is payable in the United States to—

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this chapter;

and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this chapter or to facilitate the administration thereof.

(3) UNINSURED DEPOSITS.—The term ''uninsured deposit'' means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

(4) PREFERRED DEPOSITS.—The term ''preferred deposits'' means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

(n) The term ''transferred deposit'' means a deposit in a new bank or other insured depository institution made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured depository institution.

(*o*) The term ''domestic branch'' includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of

the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent. The term ''domestic branch'' does not include an automated teller machine or a remote service unit. The term ''foreign branch'' means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted.

(p) The term ''trust funds'' means funds held by an insured depository institution in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term ''appropriate Federal banking agency'' means—

(1) the Comptroller of the Currency, in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;

(2) the Board of Governors of the Federal Reserve System, in the case of—

(A) any State member insured bank (except a District bank),

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act [12 U.S.C. 221 et seq.] which is made applicable under the International Banking Act of 1978 [12 U.S.C. 3101 et seq.],

(C) any foreign bank which does not operate an insured branch,

(D) any agency or commercial lending company other than a Federal agency,

(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 [12 U.S.C. 3105(c)(1)], including such proceedings under the Financial Institutions Supervisory Act of 1966, and

(F) any bank holding company and any subsidiary of a bank holding company (other than a bank);

(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank), or a foreign bank having an insured branch; and

(4) the Director of the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

(r) STATE BANK SUPERVISOR.—

(1) IN GENERAL.—The term ''State bank supervisor'' means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.

(2) INTERSTATE APPLICATION.—The State bank supervisors of more than 1 State may be the appropriate State bank supervisor for any insured depository institution.

(s) DEFINITIONS RELATING TO FOREIGN BANKS AND BRANCHES.—

(1) FOREIGN BANK.—The term ''foreign bank'' has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978 [12 U.S.C. 3101(b)(7)].

(2) FEDERAL BRANCH.—The term ''Federal branch'' has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978 [12 U.S.C. 3101(b)(6)].

(3) INSURED BRANCH.—The term ''insured branch'' means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978 [12 U.S.C. 3101(b)(3)]) of a foreign bank any deposits in which are insured pursuant to this chapter.

(t) INCLUDES, INCLUDING.—

(1) IN GENERAL.—The terms ''includes'' and ''including'' shall not be construed more restrictively than the ordinary usage of such terms so as to exclude any other thing not referred to or described.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as creating any inference that the term ''includes'' or ''including'' in any other provision of Federal law may be deemed to exclude any other thing not referred to or described.

(u) INSTITUTION-AFFILIATED PARTY.—The term ''institution-affiliated party'' means—

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 1817(j) of this title;

(3) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

(v) VIOLATION.—The term ''violation'' includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(w) DEFINITIONS RELATING TO AFFILIATES OF DEPOSITORY INSTITUTIONS.—

(1) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term ''depository institution holding company'' means a bank holding company or a savings and loan holding company.

(2) BANK HOLDING COMPANY.—The term ''bank holding company'' has the meaning given to such term in section 1841 of this title.

(3) SAVINGS AND LOAN HOLDING COMPANY.—The term ''savings and loan holding company'' has the meaning given to such term in section 1467a of this title.

(4) SUBSIDIARY.—The term ''subsidiary''—

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) CONTROL.—The term ''control'' has the meaning given to such term in section 1841 of this title.

(6) AFFILIATE.—The term ''affiliate'' has the meaning given to such term in section 1841(k) of this title.

(7) COMPANY.—The term ''company'' has the same meaning as in section 1841(b) of this title.

(x) DEFINITIONS RELATING TO DEFAULT.—

(1) DEFAULT.—The term ''default'' means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) IN DANGER OF DEFAULT.—The term ''in danger of default'' means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking agency is the Corporation, the Corporation has determined) that—

(A) in the opinion of such agency or authority—

(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority—

(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.

(y) The term ''deposit insurance fund'' means the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate.

(z) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' means the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

(Sept. 21, 1950, ch. 967, § 2[3], 64 Stat. 873; July 14, 1952, ch. 725, 66 Stat. 605; Aug. 1, 1956, ch. 852, § 3, 70 Stat. 908; Pub. L. 86–671, § 1, July 14, 1960, 74 Stat. 546; Pub. L. 89–695, title II, § 201, title III, §§ 301(a), 303(a), Oct. 16, 1966, 80 Stat. 1046, 1055, 1056; Pub. L. 91–151, § 7(a)(1), Dec. 23, 1969, 83 Stat. 375; Pub. L. 91–609, title IX, § 910(a)–(f), Dec. 31, 1970, 84 Stat. 1811, 1812; Pub. L. 93–495, title I, §§ 101(a)(1), 102(a)(1), Oct. 28, 1974, 88 Stat. 1500, 1502; Pub. L. 95–369, § 6(c)(2)–(6), Sept. 17, 1978, 92 Stat. 614, 615; Pub. L. 95–630, title III, § 301(a), Nov. 10, 1978, 92 Stat. 3675; Pub. L. 96–221, title III, § 308(a)(1)(A), Mar. 31, 1980, 94 Stat. 147; Pub. L. 97–110, title I, §§ 102, 103(a), Dec. 26, 1981, 95 Stat. 1513; Pub. L. 97–320, title I, § 113(a), (b), title VII, § 703(a), (b), Oct. 15, 1982, 96 Stat. 1473, 1538, 1539; Pub. L. 100–86, title I, § 101(g)(1), title V, § 503(b), Aug. 10, 1987, 101 Stat. 563, 632; Pub. L. 101–73, title II, §§ 201(a), 204, Aug. 9, 1989, 103 Stat. 187, 190; Pub. L. 102–242, title I, §§ 111(e), 112(b), 131(c)(3), 141(f), 161(c), title III, §§ 305(c), 311(b)(5)(A), Dec. 19, 1991, 105 Stat. 2242, 2266, 2278, 2286, 2355, 2366; Pub. L. 102–550, title XVI, §§ 1603(b)(2)(B), (d)(5), 1606(g)(2), Oct. 28, 1992, 106 Stat. 4079, 4080, 4089; Pub. L. 103–204, § 19(b), Dec. 17, 1993, 107 Stat. 2404; Pub. L. 103–325, title III, § 326(b)(2), title VI, § 602(a)(1), Sept. 23, 1994, 108 Stat. 2229, 2288; Pub. L. 104–208, div. A, title II, §§ 2205(b), 2614(a), 2704(d)(6)(A), (14)(A), Sept. 30, 1996, 110 Stat. 3009–405, 3009–478, 3009–488, 3009–490.)

REFERENCES IN TEXT

The Federal Reserve Act, referred to in subsec. (q)(2)(B), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The International Banking Act of 1978, referred to in subsec. (q)(2)(B), is Pub. L. 95–369, Sept. 17, 1978, 92 Stat. 607, which enacted sections 347d, 611a, and 3101 to 3111 of this title, amended sections 72, 378, 614, 615, 618, 619, 1813, 1815, 1817, 1818, 1820, 1821, 1822, 1823, 1828, 1829b, 1831b, and 1841 of this title, and enacted provisions set out as notes under sections 36, 247, 601, 611a, and 3101 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

The Financial Institutions Supervisory Act of 1966, referred to in subsec. (q)(2)(E), is Pub. L. 89–695, Oct. 16, 1966, 80 Stat. 1028. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 1464 of this title and Tables.

PRIOR PROVISIONS

Section is derived from subsec. (c) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (a)(1)(B). Pub. L. 104–208, § 2704(d)(14)(A), which directed striking out subpar. (B) and adding a new subpar. (B), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (*l*)(5)(C). Pub. L. 104–208, § 2614(a), added subpar. (C).

Subsec. (*o*). Pub. L. 104–208, § 2205(b), substituted ''lent. The term 'domestic branch' does not include an automated teller machine or a remote service unit. The'' for ''lent; and the''.

Subsec. (y). Pub. L. 104–208, § 2704(d)(6)(A), which directed the general amendment of subsec. (y), was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (i)(1). Pub. L. 103–325, §602(a)(1)(A), substituted ''section 1821(m) of this title'' for ''section 1821(h) of this title''.

Subsec. (*l*)(4). Pub. L. 103–325, §602(a)(1)(B), substituted ''a bank's or a'' for ''bank's or'' before ''savings association's balance''.

Subsec. (*l*)(5)(A). Pub. L. 103–325, §326(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''any obligation of a bank or savings association which is payable only at an office of such bank or savings association located outside of the States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and''.

Subsec. (q)(2)(E). Pub. L. 103–325, §602(a)(1)(C), substituted ''Financial Institutions Supervisory Act of 1966'' for ''Depository Institutions Supervisory Act''.

1993—Subsec. (w)(7). Pub. L. 103–204, §19(b)(2), added par. (7).

Subsec. (z). Pub. L. 103–204, §19(b)(1), amended subsec. (z) generally. Prior to amendment, subsec. (z) read as follows: ''FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.''

1992—Subsec. (i)(2). Pub. L. 102–550, §1606(g)(2), substituted ''1821(n)'' for ''1821(i)''.

Subsec. (r). Pub. L. 102–550, §1603(b)(2)(B), which directed the amendment of section 112 of the ''Federal Deposit Insurance Corporation Improvement Act of 1992'', was executed by amending section 112 of Pub. L. 102–242, which is the Federal Deposit Insurance Corporation Improvement Act of 1991, to reflect the probable intent of Congress. See 1991 Amendment note below.

Subsec. (y). Pub. L. 102–550, §1603(d)(5), amended directory language of Pub. L. 102–242, §131(c)(3). See 1991 Amendment note below.

1991—Subsec. (m). Pub. L. 102–242, §311(b)(5)(A), inserted heading.

Subsec. (m)(1). Pub. L. 102–242, §311(b)(5)(A), added par. (1) and struck out former par. (1) which read as follows: ''Subject to the provisions of paragraph (2) of this subsection, the term 'insured deposit' means the net amount due to any depositor (other than a depositor referred to in the third sentence of this subsection) for deposits in an insured depository institution (after deducting offsets) less any part thereof which is in excess of $100,000. Such net amount shall be determined according to such regulations as the Board of Directors may prescribe, and in determining the amount due to any depositor there shall be added together all deposits in the depository institution maintained in the same capacity and the same right for his benefit either in his own name or in the names of others except trust funds which shall be insured as provided in subsection (i) of section 1817 of this title. Each officer, employee, or agent of the United States, of any State of the United States, of the District of Columbia, of any Territory of the United States, of Puerto Rico, of Guam, of American Samoa, of the Trust Territory of the Pacific Islands, of the Virgin Islands, of the Northern Mariana Islands, of any county, of any municipality, or of any political subdivision thereof, herein called 'public unit', having official custody of public funds and lawfully depositing the same in an insured depository institution shall, for the purpose of determining the amount of the insured deposits, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the same or any public unit having official custody of public funds and lawfully depositing the same in the same insured depository institution in custodial capacity. For the purpose of clarifying and defining the insurance coverage under this subsection and subsection (i) of section 1817 of this title, the Corporation is authorized to define, with such classifications and exceptions as it may prescribe, terms used in those subsections, in subsection (p) of this section, and in subsections (a) and (i) of section 1821 of this title and the extent of the insurance coverage resulting therefrom.''

Subsec. (m)(3), (4). Pub. L. 102–242, §141(f), added pars. (3) and (4).

Subsec. (r). Pub. L. 102–242, §112(b), as added by Pub. L. 102–550, §1603(b)(2)(B), amended subsec. (r) generally. Prior to amendment, subsec. (r) read as follows: ''The terms 'foreign bank' and 'Federal branch' shall be construed consistently with the usage of such terms in the International Banking Act of 1978.''

Subsec. (s). Pub. L. 102–242, §111(e), amended subsec. (s) generally. Prior to amendment, subsec. (s) read as follows: ''The term 'insured branch' means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of this chapter.''

Subsec. (w). Pub. L. 102–242, §161(c), substituted ''Affiliates of Depository Institutions'' for ''Holding Companies'' in heading.

Subsec. (y). Pub. L. 102–242, §131(c)(3), as amended by Pub. L. 102–550, §1603(d)(5), added subsec. (y).

Subsec. (z). Pub. L. 102–242, §305(c), added subsec. (z).

1989—Subsec. (a). Pub. L. 101–73, §204(a), amended subsec. (a) generally, substituting provisions defining ''bank'', ''State bank'', ''State'', and ''District bank'' for provisions defining ''State bank'' and ''State''.

Subsec. (b). Pub. L. 101–73, §204(b), amended subsec. (b) generally, substituting provisions defining ''savings association'', ''Federal savings association'', and ''State savings association'' for provisions defining ''State member bank'' and ''State nonmember bank''.

Subsec. (c). Pub. L. 101–73, §204(c), amended subsec. (c) generally, substituting definitions relating to depository institutions for definition of ''District bank''.

Subsec. (d). Pub. L. 101–73, §204(d), amended subsec. (d) generally, substituting provisions defining ''national member bank'' and ''State member bank'' for provisions defining ''national member bank''.

Subsec. (e). Pub. L. 101–73, §204(e), amended subsec. (e) generally, substituting provisions defining ''national nonmember bank'' and ''State nonmember bank'' for provisions defining ''national nonmember bank''.

Subsec. (j). Pub. L. 101–73, §204(f)(1), inserted ''or savings association'' after ''of a bank''.

Subsec. (*l*)(1) to (3). Pub. L. 101–73, §204(f)(2)(A), inserted ''or savings association'' after ''a bank'', ''the bank'', ''receiving bank'', and ''such bank'' wherever appearing.

Subsec. (*l*)(4). Pub. L. 101–73, §204(f)(2)(A), (B), inserted ''or savings association'' after ''another bank'', and ''or savings association's'' after ''bank's''.

Subsec. (*l*)(5). Pub. L. 101–73, §204(f)(2)(A), (C), inserted ''or savings association'' after ''a bank'', and '', Director of the Office of Thrift Supervision,'' after ''Comptroller of the Currency''.

Subsec. (*l*)(5)(A). Pub. L. 101–73, §204(f)(2)(A), (D), inserted ''or savings association'' after ''a bank'' and after ''such bank'', and substituted ''the Virgin Islands, and the Northern Mariana Islands'' for ''and the Virgin Islands''.

Subsec. (m)(1). Pub. L. 101–73, §204(f)(3)(A), substituted ''deposits in the depository institution maintained'' for ''deposits in the bank maintained'' and inserted reference to the Northern Mariana Islands.

Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (m)(2). Pub. L. 101–73, §204(f)(3)(B), substituted ''term'' for ''ther''.

Subsec. (n). Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (p). Pub. L. 101–73, §201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (q). Pub. L. 101–73, §204(f)(4), amended subsec. (q) generally. Prior to amendment, subsec. (q) read as follows: ''The term 'appropriate Federal banking agency' shall mean—

''(1) the Comptroller of the Currency in the case of a national banking association, a District bank, or a Federal branch or agency of a foreign bank;

''(2) the Board of Governors of the Federal Reserve System—

''(A) in the case of a State member insured bank (except a District bank),

''(B) in the case of any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978,

''(C) in the case of any foreign bank which does not operate an insured branch,

''(D) in the case of any agency or commercial lending company other than a Federal agency, and

''(E) in the case of supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act,

''(3) the Federal Deposit Insurance Corporation in the case of a State nonmember insured Bank (except a District bank) or a foreign bank having an insured branch; and

''(4) the Federal Home Loan Bank Board in the case of an insured Federal savings bank.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution. For the purposes of subsections (b) through (n) of section 1818 of this title, the term 'insured bank' shall be deemed to include any uninsured branch or agency of a foreign bank or any commercial lending company owned or controlled by a foreign bank.''

Subsec. (t). Pub. L. 101–73, § 204(f)(5), amended subsec. (t) generally, substituting provisions relating to definition and construction of ''includes'' and ''including'' for provisions defining ''insured Federal savings bank''.

Subsecs. (u) to (x). Pub. L. 101–73, § 204(f)(6), added subsecs. (u) to (x).

1987—Subsec. (g). Pub. L. 100–86, § 101(g)(1), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The term 'savings bank' means a bank (other than a mutual savings bank) which transacts its The term 'new bank' means a new national banking association organized by the Corporation to assume the insured deposits of an insured bank closed on account of inability to meet the demands of its depositors and otherwise to perform temporarily the functions prescribed in this chapter.ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business: *Provided*, That the bank maintains, until maturity date or until withdrawn, all deposits made with it (other than funds held by it in a fiduciary capacity) as time savings deposits of the specific term type or of the type where the right is reserved to the bank to require written notice before permitting withdrawal: *Provided further*, That such bank to be considered a savings bank must elect to become subject to regulations of the Corporation with respect to the redeposit of maturing deposits and prohibiting withdrawal of deposits by checking except in cases where such withdrawal was permitted by law on August 23, 1935, from specifically designated deposit accounts totaling not more than 15 per centum of the bank's total deposits.''

Subsec. (i). Pub. L. 100–86, § 503(b), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The term 'new bank' means a new national banking association organized by the Corporation to assume the insured deposits of an insured bank closed on account of inability to meet the demands of its depositors and otherwise to perform temporarily the functions prescribed in this chapter.''

1982—Subsec. (a). Pub. L. 97–320, § 703(a), inserted ''industrial bank or similar financial institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank,'' before ''or other banking institution''.

Subsec. (*l*)(1). Pub. L. 97–320, § 703(b), inserted ''thrift certificate, investment certificate, certificate of indebtedness, or other similar name,'' before ''or a check or draft drawn against a deposit account''.

Subsec. (q)(4). Pub. L. 97–320, § 113(a), added par. (4).

Subsec. (t). Pub. L. 97–320, § 113(b), added subsec. (t).

1981—Subsec. (a). Pub. L. 97–110, § 103(a)(1), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,'' wherever appearing.

Subsec. (*l*)(5). Pub. L. 97–110, § 102, reenacted without change the provisions preceding subpar. (A), redesignated remaining existing provisions as subpar. (A), inserted reference to banks located outside of the Trust Territory of the Pacific Islands in subpar. (A) as thus redesignated, and added subpar. (B).

Subsec. (m)(1). Pub. L. 97–110, § 103(a)(2), inserted ''of the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsec. (*o*). Pub. L. 97–110, § 103(a)(3), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,'' wherever appearing.

1980—Subsec. (m)(1). Pub. L. 96–221 substituted ''$100,000'' for ''$40,000''.

1978—Subsec. (h). Pub. L. 95–369, § 6(c)(2), inserted ''(including a foreign bank having an insured branch)'' after ''The term 'insured bank' means any bank''.

Subsec. (j). Pub. L. 95–369, § 6(c)(3), inserted ''or of a branch of a foreign bank'' after ''affairs of a bank''.

Subsec. (m). Pub. L. 95–369, § 6(c)(4), designated existing provisions as par. (1), inserted ''Subject to the provisions of paragraph (2) of this subsection'', and added par. (2).

Subsec. (*o*). Pub. L. 95–630 inserted ''domestic'' before ''branch'' the first time it appeared, and inserted a definition of ''foreign branch'' at end.

Subsec. (q). Pub. L. 95–369, § 6(c)(5), inserted reference to a Federal branch or agency of a foreign bank in par. (1), designated existing provisions of par. (2) as par. (2)(A) and added subpars. (B) to (E), inserted reference to a foreign bank having an insured branch in par. (3), and inserted closing provisions relating to the number of agencies which may be an appropriate Federal banking agency, and defining ''insured bank'' for purposes of section 1818(b) to (n) of this title.

Subsecs. (r), (s). Pub. L. 95–369, § 6(c)(6), added subsecs. (r) and (s).

1974—Subsec. (m). Pub. L. 93–495 inserted ''(other than a depositor referred to in the third sentence of this subsection)'' after ''net amount due to any depositor'', and substituted ''$40,000'' for ''$20,000''.

1970—Pub. L. 91–609 inserted reference to American Samoa in subsecs. (a), (d), (e), (*l*)(5), (m), and (*o*), respectively.

1969—Subsec. (m). Pub. L. 91–151 substituted $20,000 for $15,000 in first sentence.

1966—Subsec. (m). Pub. L. 89–695, §§ 301(a), 303(a), substituted ''$15,000'' for ''$10,000'' in first sentence and inserted sentence which, for purpose of clarifying and defining the insurance coverage under subsec. (m) of this section and section 1817(i) of this title, authorized the Corporation to define terms used in those provisions, subsec. (p) of this section, and section 1821(a) and (i) of this title and the extent of insurance coverage resulting therefrom, respectively.

Subsec. (q). Pub. L. 89–695, § 201, added subsec. (q).

1960—Subsec. (*l*). Pub. L. 86–671 amended subsec. (*l*) generally, and among other changes, inserted in par. (1) ''or held'', ''either conditionally or unconditionally'', ''or a check or draft drawn against a deposit account and certified by the bank, or a letter of credit or a traveler's check on which the bank is primarily liable'', and inserted the proviso, added pars. (3) and (4), inserted provisions in par. (5) requiring the Board of Directors to consult with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, and struck out provisions which permitted mainland banks to exclude from deposit insurance the deposits of any of its branches in the Virgin Islands.

1956—Subsec. (a). Act Aug. 1, 1956, § 3(a), inserted ''Guam,'' after ''Puerto Rico,'' and substituted a

comma for the period and inserted ''and the word 'State' means any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, or the Virgin Islands''.

Subsecs. (d), (e). Act Aug. 1, 1956, §3(b), inserted ''Guam,'' after ''Puerto Rico,''.

Subsec. (*l*). Act Aug. 1, 1956, §3(c), inserted ''Guam,'' after ''Puerto Rico,'' in first proviso.

Subsec. (m). Act Aug. 1, 1956, §3(d), inserted ''of Guam,'' after ''of Puerto Rico,''.

Subsec. (*o*). Act Aug. 1, 1956, §3(b), inserted ''Guam,'' after ''Puerto Rico,''.

1952—Subsec. (*l*). Act July 14, 1952, made it compulsory for banks having branches in Puerto Rico to insure their deposits.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2614(b) of div. A of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any liability of an insured depository that arises under an annuity contract issued on or after the date of enactment of this Act [Sept. 30, 1996].''

Amendment by section 2704(d)(6)(A), (14)(A) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 131(c)(3) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 131(f) of Pub. L. 102–242, set out as a note under section 1464 of this title.

Amendment by section 311(b)(5)(A) of Pub. L. 102–242 not applicable to any time deposit which was made before Dec. 19, 1991, and matures after end of 2-year period beginning Dec. 19, 1991, with rollovers and renewals treated as new deposits, see section 311(c)(2) of Pub. L. 102–242, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective Mar. 31, 1980, see section 308(e) of Pub. L. 96–221, set out as a note under section 1817 of this title.

APPLICABILITY OF 1980 AMENDMENT

Section 308(a)(2) of Pub. L. 96–221 provided that: ''The amendments made by this subsection [amending this section and sections 1817 and 1821 of this title] are not applicable to any claim arising out of the closing of a bank prior to the effective date of this section [see section 308(e) of Pub. L. 96–221, set out as a note under section 1817 of this title].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 101(g) of Pub. L. 93–495 provided that: ''This section and the amendments made by it [amending this section and sections 1464, 1724, 1728, 1757, 1787, 1817, and 1821 of this title] shall take effect on the thirtieth day beginning after the date of enactment of this Act [Oct. 28, 1974].''

Section 102(b), (c) of Pub. L. 93–495 provided that:

''(b) The amendments made by this section [amending this section and sections 1817 and 1821 of this title] are not applicable to any claim arising out of the closing of a bank prior to the effective date of this section.

''(c) The amendments made by this section shall take effect on the thirtieth day beginning after the date of enactment of this Act [Oct. 28, 1974].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 7(b) of Pub. L. 91–151 provided that: ''The amendments made by this section [amending this section and sections 1817 and 1821 of this title] are not applicable to any claim arising out of the closing of a bank prior to the date of enactment of this Act [Dec. 23, 1969].''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 301(e) of Pub. L. 89–695 provided that: ''The amendments made by this section [amending this section and sections 1817 and 1821 of this title] shall not be applicable to any claim arising out of the closing of a bank where such closing is prior to the date of enactment of this Act [Oct. 16, 1966].''

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, §908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending this section and sections 1464, 1730, 1817 to 1820 of this title, repealing section 77 of this title, and enacting provisions set out as notes under this section and sections 1464 and 1730 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted''.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–671 effective Jan. 1, 1961, see section 7 of Pub. L. 86–671, set out as a note under section 1817 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Section 206 of title II of Pub. L. 89–695 provided that: ''Nothing contained in this title [amending this section and sections 1817 to 1820 of this title and repealing section 77 of this title] shall be construed to repeal, modify, or affect the provisions of section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 24a, 30, 43, 93, 191, 248, 265, 347b, 371b–2, 375b, 461, 504, 505, 506, 1422, 1441, 1441a, 1462, 1462a, 1464, 1467, 1467a, 1735f–7a, 1759, 1785, 1786, 1786a, 1790d, 1815, 1817, 1820a, 1828, 1828a, 1828b, 1831q, 1831r, 1831w, 1832, 1834, 1834a, 1834b, 1835, 1835a, 1841, 1842, 1843, 1847, 1861, 1953, 1972, 2013, 2122, 2245, 2278a–3, 2278b–4, 2802, 2804, 2902, 2903, 2906, 2907, 3101, 3102, 3103, 3104, 3105, 3108, 3110, 3350, 3413, 3902, 3909, 4009, 4204, 4224, 4309, 4702, 4713, 4742, 4801, 4805a, 4808, 4809, 4909 of this title; title 7 sections 1a, 6f, 27; title 10 sections 4357, 6975, 9356; title 11 sections 101, 109, 781; title 15 sections 57a, 77c, 78c, 78*o*–5, 78q, 80a–2, 80a–17, 80a–26, 80a–34, 80b–10a, 1607, 1679a, 1681s, 1691c, 1692*l*, 1693*o*, 6701, 6716, 6805, 6809, 6825; title 18 sections 20, 656, 1004, 1005, 1906, 2113, 3059A; title 20 section 1085; title 22 section 5426;

title 26 sections 42, 414; title 29 section 1134; title 31 sections 5312, 5321, 5326; title 42 sections 669a, 5318a, 9601.

§ 1814. Insured depository institutions

(a) Continuation of insurance

(1) Banks

Each bank, which is an insured depository institution on September 21, 1950, shall be and continue to be, without application or approval, an insured depository institution and shall be subject to the provisions of this chapter.

(2) Savings associations

Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before August 9, 1989, shall be, without application or approval, an insured depository institution.

(b) Continuation of insurance upon becoming a member bank

In the case of an insured bank which is admitted to membership in the Federal Reserve System or an insured State bank which is converted into a national member bank, the bank shall continue as an insured bank.

(c) Continuation of insurance after conversion

Subject to section 1815(d) of this title—

(1) any State depository institution which results from the conversion of any insured Federal depository institution; and

(2) any Federal depository institution which results from the conversion of any insured State depository institution,

shall continue as an insured depository institution.

(d) Continuation of insurance after merger or consolidation

Any State depository institution or any Federal depository institution which results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a noninsured depository institution with an insured depository institution, shall continue as an insured depository institution.

(Sept. 21, 1950, ch. 967, § 2[4], 64 Stat. 875; Pub. L. 97–320, title I, § 113(c), Oct. 15, 1982, 96 Stat. 1473; Pub. L. 101–73, title II, §§ 201(a), 205, Aug. 9, 1989, 103 Stat. 187, 194; Pub. L. 102–242, title I, § 115(b), Dec. 19, 1991, 105 Stat. 2249; Pub. L. 102–550, title XVI, § 1603(b)(6), Oct. 28, 1992, 106 Stat. 4079.)

PRIOR PROVISIONS

Section is derived from subsec. (e) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–550 amended directory language of Pub. L. 102–242, § 115(b). See 1991 Amendment note below.

1991—Subsec. (b). Pub. L. 102–242, § 115(b), as amended by Pub. L. 102–550, § 1603(b)(6), amended subsec. (b) generally, substituting present provisions for provisions which related to certification by other banking agencies.

1989—Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (a). Pub. L. 101–73, § 205(1), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and substituted ''Each bank'' for ''Every bank'', and added par. (2).

Subsec. (b). Pub. L. 101–73, § 205(2)(A), (B), inserted after first sentence ''Any application or notice for membership or to commence or resume business shall be promptly provided by the appropriate Federal banking agency to the Corporation and the Corporation shall have a reasonable period of time to provide comments on such application or notice. Any comments submitted by the Corporation to the appropriate Federal banking agency shall be considered by such agency.'' and struck out at end ''A State bank, resulting from the conversion of an insured national bank, shall continue as an insured bank. A State bank, resulting from the merger or consolidation of insured banks, or from the merger or consolidation of a noninsured bank or institution with an insured State bank, shall continue as an insured bank.''

Pub. L. 101–73, § 205(2)(C), which directed the amendment of subsec. (b) by substituting ''(b) CERTIFICATION BY OTHER BANKING AGENCIES.—Every national bank'' for ''(b) Every national bank'' could not be executed literally because the original read ''(b) Every national member bank'', but was executed by inserting the heading without changing the text to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 101–73, § 205(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Every Federal savings bank which is chartered pursuant to section 1464(*o*) of this title, and which is engaged in the business of receiving deposits other than trust funds, shall be an insured bank from the time it is authorized to commence business, until such time as its accounts are insured by the Federal Savings and Loan Insurance Corporation.''

Subsec. (d). Pub. L. 101–73, § 205(3), added subsec. (d).

1982—Subsec. (c). Pub. L. 97–320 added subsec. (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1815, 1816, 1817, 1818 of this title.

§ 1815. Deposit insurance

(a) Application to Corporation required

(1) In general

Except as provided in paragraphs (2) and (3), any depository institution which is engaged in the business of receiving deposits other than trust funds (as defined in section 1813(p) of this title), upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution.

(2) Interim depository institutions

In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open for business, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency.

(3) Application and approval not required in cases of continued insurance

Paragraph (1) shall not apply in the case of any depository institution whose insured status is continued pursuant to section 1814 of this title.

(4) Review requirements

In reviewing any application under this subsection, the Board of Directors shall consider the factors described in section 1816 of this title in determining whether to approve the application for insurance.

(5) Notice of denial of application for insurance

If the Board of Directors votes to deny any application for insurance by any depository institution, the Board of Directors shall promptly notify the appropriate Federal banking agency and, in the case of any State depository institution, the appropriate State banking supervisor of the denial of such application, giving specific reasons in writing for the Board of Directors' determination with reference to the factors described in section 1816 of this title.

(6) Nondelegation requirement

The authority of the Board of Directors to make any determination to deny any application under this subsection may not be delegated by the Board of Directors.

(b) Foreign branch nonmember banks; matters considered

Subject to the provisions of this chapter and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

(1) the financial history and condition of the bank,

(2) the adequacy of its capital structure,

(3) its future earnings prospects,

(4) the general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,

(5) the risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund,

(6) the convenience and needs of the community to be served by the branch,

(7) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this chapter, and

(8) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this chapter.

(c) Protection to deposit insurance fund; surety bond, pledge of assets, etc.; injunction

(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on deposit with the Corporation, or as the Corporation may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in accordance with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such additional requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the deposit insurance fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any United States district court, or United States court of any territory, within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5, and may not be made an issue in an action for an injunction under this paragraph.

(d) Insurance fees

(1) Uninsured institutions

(A) In general

Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund and the Savings Asso-

ciation Insurance Fund as required by section 1817 of this title.

(B) Fee credited to appropriate fund

The fee paid by the depository institution shall be credited to the Bank Insurance Fund if the depository institution becomes a Bank Insurance Fund member, and to the Savings Association Insurance Fund if the depository institution becomes a Savings Association Insurance Fund member.

(C) Exception for certain depository institutions

Any depository institution that becomes an insured depository institution by operation of section 1814(a) of this title shall not pay any fee.

(2) Conversions

(A) In general

(i) Prior approval required

No insured depository institution may participate in a conversion transaction without the prior approval of the Corporation.

(ii) 5-year moratorium on conversions

Except as provided in subparagraph (C), the Corporation may not approve any conversion transaction before the later of the end of the 5-year period beginning on August 9, 1989, or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund.

(B) "Conversion transaction" defined

For purposes of this paragraph, the term ''conversion transaction'' means—

(i) the change of status of an insured depository institution from a Bank Insurance Fund member to a Savings Association Insurance Fund member or from a Savings Association Insurance Fund member to a Bank Insurance Fund member;

(ii) the merger or consolidation of a Bank Insurance Fund member with a Savings Association Insurance Fund member;

(iii) the assumption of any liability by—

(I) any Bank Insurance Fund member to pay any deposits of a Savings Association Insurance Fund member; or

(II) any Savings Association Insurance Fund member to pay any deposits of a Bank Insurance Fund member;

(iv) the transfer of assets of—

(I) any Bank Insurance Fund member to any Savings Association Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Bank Insurance Fund member; or

(II) any Savings Association Insurance Fund member to any Bank Insurance Fund member in consideration of the assumption of liabilities for any portion of the deposits of such Savings Association Insurance Fund member; and

(v) the transfer of deposits—

(I) from a Bank Insurance Fund member to a Savings Association Insurance Fund member; or

(II) from a Savings Association Insurance Fund member to a Bank Insurance Fund member;

in a transaction in which the deposit is received from a depositor at an insured depository institution for which a receiver has been appointed and the receiving insured depository institution is acting as agent for the Corporation in connection with the payment of such deposit to the depositor at the institution for which a receiver has been appointed.

(C) Approval during moratorium

The Corporation may approve a conversion transaction at any time if—

(i) the conversion transaction affects an insubstantial portion, as determined by the Corporation, of the total deposits of each depository institution participating in the conversion transaction;

(ii) the conversion occurs in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, and the Corporation determines that the estimated financial benefits to the Savings Association Insurance Fund or Resolution Trust Corporation equal or exceed the Corporation's estimate of loss of assessment income to such insurance fund over the remaining balance of the moratorium period established by subparagraph (A), and the Resolution Trust Corporation concurs in the Corporation's determination; or

(iii) the conversion occurs in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default and the Corporation determines that the estimated financial benefits to the Bank Insurance Fund equal or exceed the Corporation's estimate of the loss of assessment income to the insurance fund over the remaining balance of the moratorium period established by subparagraph (A).

(D) Certain transfers deemed to affect insubstantial portion of total deposits

For purposes of subparagraph (C)(i), any conversion transaction shall be deemed to affect an insubstantial portion of the total deposits of an insured depository institution, to the extent the aggregate amount of the total deposits transferred in such transaction and in all conversion transactions occurring after August 9, 1989, does not exceed 35 percent of the lesser of—

(i) the amount which is equal to the sum of—

(I) the total deposits of such insured depository institution on May 1, 1989; and

(II) the total amount of net interest credited to the depository institution's deposits during the period beginning on May 1, 1989, and ending on the date of the transfer of deposits in connection with such transaction; or

(ii) the amount which is equal to the total deposits of such insured depository

institution on the date of the transfer of deposits in connection with such transaction.

(E) Exit and entrance fees

Each insured depository institution participating in a conversion transaction shall pay—

(i) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Savings Association Insurance Fund member, an exit fee (in an amount to be determined and assessed in accordance with subparagraph (F)) which—

(I) shall be deposited in the Savings Association Insurance Fund; or

(II) shall be paid to the Financing Corporation, if the Secretary of the Treasury determines that the Financing Corporation has exhausted all other sources of funding for interest payments on the obligations of the Financing Corporation and orders that such fees be paid to the Financing Corporation;

(ii) in the case of a conversion transaction in which the resulting or acquiring depository institution is not a Bank Insurance Fund member, an exit fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)) which shall be deposited in the Bank Insurance Fund; and

(iii) an entrance fee in an amount to be determined by the Corporation (and assessed in accordance with subparagraph (F)(ii)), except that—

(I) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Bank Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Bank Insurance Fund, and shall be paid to the Bank Insurance Fund; and

(II) in the case of a conversion transaction in which the resulting or acquiring depository institution is a Savings Association Insurance Fund member, the fee shall be the approximate amount which the Corporation calculates as necessary to prevent dilution of the Savings Association Insurance Fund, and shall be paid to the Savings Association Insurance Fund.

(F) Assessment of exit and entrance fees

(i) Determination of amount of exit fees

(I) Conversions before January 1, 1997

In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated before January 1, 1997, the amount of such fee shall be determined jointly by the Corporation and the Secretary of the Treasury.

(II) Assessments after December 31, 1996

In the case of any exit fee assessed under subparagraph (E)(i) for any conversion transaction consummated after December 31, 1996, the amount of such fee shall be determined by the Corporation.

(ii) Procedures

The Corporation shall prescribe, by regulation, procedures for assessing any exit or entrance fee under subparagraph (E).

(G) Charter conversion of SAIF members

This subsection shall not be construed as prohibiting any savings association which is a Savings Association Insurance Fund member from converting to a bank charter during the period described in subparagraph (A)(ii) if the resulting bank remains a Savings Association Insurance Fund member.

(3) Optional conversions subject to special rules on deposit insurance payments

(A) Conversions allowed

Notwithstanding paragraph (2)(A), and subject to the requirements of this paragraph, any insured depository institution may participate in a transaction described in clause (ii), (iii), or (iv) of paragraph (2)(B) if the transaction is approved by the responsible agency under section 1828(c)(2) of this title.

(B) Assessments on deposits attributable to former depository institution

(i) Assessments by SAIF

In the case of any acquiring, assuming, or resulting depository institution which is a Bank Insurance Fund member, that portion of the deposits of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction) shall be treated as deposits which are insured by the Savings Association Insurance Fund.

(ii) Assessments by BIF

In the case of any acquiring, assuming, or resulting depository institution which is a Savings Association Insurance Fund member, that portion of the deposits of such member for any semiannual period which is equal to the adjusted attributable deposit amount (determined under subparagraph (C) with respect to the transaction) shall be treated as deposits which are insured by the Bank Insurance Fund.

(C) Determination of adjusted attributable deposit amount

Except as provided in subparagraph (K), the adjusted attributable deposit amount which shall be taken into account for purposes of determining the amount of the assessment under subparagraph (B) for any semiannual period by any acquiring, assuming, or resulting depository institution in connection with a transaction under subparagraph (A) is the amount which is equal to the sum of—

(i) the amount of any deposits acquired by the institution in connection with the transaction (as determined at the time of such transaction);

(ii) the total of the amounts determined under clause (iii) for semiannual periods preceding the semiannual period for which the determination is being made under this subparagraph; and

(iii) the amount by which the sum of the amounts described in clauses (i) and (ii) would have increased during the preceding semiannual period (other than any semiannual period beginning before the date of such transaction) if such increase occurred at a rate equal to the annual rate of growth of deposits of the acquiring, assuming, or resulting depository institution minus the amount of any deposits acquired through the acquisition, in whole or in part, of another insured depository institution.

(D) Deposit of assessment

That portion of any assessment under section 1817 of this title which—

(i) is determined in accordance with subparagraph (B)(i) shall be deposited in the Savings Association Insurance Fund; and

(ii) is determined in accordance with subparagraph (B)(ii) shall be deposited in the Bank Insurance Fund.

(E) Conditions for approval, generally

(i) Information required

An application to engage in any transaction under this paragraph shall contain such information relating to the factors to be considered for approval as the responsible agency may require, by regulation or by specific request, in connection with any particular application.

(ii) No transfer of deposit insurance permitted

This paragraph shall not be construed as authorizing transactions which result in the transfer of any insured depository institution's Federal deposit insurance from 1 Federal deposit insurance fund to the other Federal deposit insurance fund.

(iii) Capital requirements

A transaction described in this paragraph shall not be approved under section 1828(c)(2) of this title unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.

(F) Certain interstate transactions

A Bank Insurance Fund member which is a subsidiary of a bank holding company may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A) unless the transaction would comply with the requirements of section 1842(d) of this title if, at the time of such transaction, the Savings Association Insurance Fund member involved in such transaction was a State bank that the bank holding company was applying to acquire.

(G) Allocation of costs in event of default

If any acquiring, assuming, or resulting depository institution is in default or danger of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such acquiring, assuming, or resulting depository institution assessed by the Bank Insurance Fund and the Savings Association Insurance Fund, respectively, under subparagraph (B).

(H) Subsequent approval of conversion transaction

This paragraph shall cease to apply if—

(i) after the end of the moratorium period established by paragraph (2)(A), the Corporation approves an application by any acquiring, assuming, or resulting depository institution to treat the transaction described in subparagraph (A) as a conversion transaction; and

(ii) the acquiring, assuming, or resulting depository institution pays the amount of any exit and entrance fee assessed by the Corporation under subparagraph (E) of paragraph (2) with respect to such transaction.

(I) "Acquiring, assuming, or resulting depository institution" defined

For purposes of this paragraph, the term ''acquiring, assuming, or resulting depository institution'' means any insured depository institution which—

(i) results from any transaction described in paragraph (2)(B)(ii) and approved under this paragraph;

(ii) in connection with a transaction described in paragraph (2)(B)(iii) and approved under this paragraph, assumes any liability to pay deposits of another insured depository institution; or

(iii) in connection with a transaction described in paragraph (2)(B)(iv) and approved under this paragraph, acquires assets from any insured depository institution in consideration of the assumption of liability for any deposits of such institution.

(J) Redesignated (I)

(K) Adjustment of adjusted attributable deposit amount

The amount determined under subparagraph (C)(i) for deposits acquired by March 31, 1995, shall be reduced by 20 percent for purposes of computing the adjusted attributable deposit amount for the payment of any assessment for any semiannual period that begins after September 30, 1996 (other than the special assessment imposed under section 2702(a) of such Act), for a Bank Insurance Fund member bank that, as of June 30, 1995—

(i) had an adjusted attributable deposit amount that was less than 50 percent of the total deposits of that member bank; or

(ii)(I) had an adjusted attributable deposit amount equal to less than 75 percent of the total assessable deposits of that member bank;

(II) had total assessable deposits greater than $5,000,000,000; and

(III) was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the Bank Insurance Fund greater than the aggregate amount of deposits insured or treated as insured by the Savings Association Insurance Fund.

(e) Liability of commonly controlled depository institutions

(1) In general

(A) Liability established

Any insured depository institution shall be liable for any loss incurred by the Corporation, or any loss which the Corporation reasonably anticipates incurring, after August 9, 1989, in connection with—

(i) the default of a commonly controlled insured depository institution; or

(ii) any assistance provided by the Corporation to any commonly controlled insured depository institution in danger of default.

(B) Payment upon notice

An insured depository institution shall pay the amount of any liability to the Corporation under subparagraph (A) upon receipt of written notice by the Corporation in accordance with this subsection.

(C) Notice required to be provided within 2 years of loss

No insured depository institution shall be liable to the Corporation under subparagraph (A) if written notice with respect to such liability is not received by such institution before the end of the 2-year period beginning on the date the Corporation incurred the loss.

(2) Amount of compensation; procedures

(A) Use of estimates

When an insured depository institution is in default or requires assistance to prevent default, the Corporation shall—

(i) in good faith, estimate the amount of the loss the Corporation will incur from such default or assistance;

(ii) if, with respect to such insured depository institution, there is more than 1 commonly controlled insured depository institution, estimate the amount of each such commonly controlled depository institution's share of such liability; and

(iii) advise each commonly controlled depository institution of the Corporation's estimate of the amount of such institution's liability for such losses.

(B) Procedures; immediate payment

The Corporation, after consultation with the appropriate Federal banking agency and the appropriate State chartering agency, shall—

(i) on a case-by-case basis, establish the procedures and schedule under which any insured depository institution shall reimburse the Corporation for such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution; or

(ii) require any insured depository institution to make immediate payment of the amount of such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution.

(C) Priority

The liability of any insured depository institution under this subsection shall have priority with respect to other obligations and liabilities as follows:

(i) Superiority

The liability shall be superior to the following obligations and liabilities of the depository institution:

(I) Any obligation to shareholders arising as a result of their status as shareholders (including any depository institution holding company or any shareholder or creditor of such company).

(II) Any obligation or liability owed to any affiliate of the depository institution (including any other insured depository institution), other than any secured obligation which was secured as of May 1, 1989.

(ii) Subordination

The liability shall be subordinate in right and payment to the following obligations and liabilities of the depository institution:

(I) Any deposit liability (which is not a liability described in clause (i)(II)).

(II) Any secured obligation, other than any obligation owed to any affiliate of the depository institution (including any other insured depository institution) which was secured after May 1, 1989.

(III) Any other general or senior liability (which is not a liability described in clause (i)).

(IV) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (i)).

(D) Adjustment of estimated payment

(i) Overpayment

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly controlled depository institution its pro rata share of any overpayment.

(ii) Underpayment

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly controlled depository institution to the

Corporation and shall require each such commonly controlled depository institution to make payment of any additional liability to the Corporation.

(3) Review

(A) Judicial

Actions of the Corporation shall be reviewable pursuant to chapter 7 of title 5.

(B) Administrative

The Corporation shall prescribe regulations and establish administrative procedures which provide for a hearing on the record for the review of—

(i) the amount of any loss incurred by the Corporation in connection with any insured depository institution;

(ii) the liability of individual commonly controlled depository institutions for the amount of such loss; and

(iii) the schedule of payments to be made by such commonly controlled depository institutions.

(4) Limitation on rights of private parties

To the extent the exercise of any right or power of any person would impair the ability of any insured depository institution to perform such institution's obligations under this subsection—

(A) the obligations of such insured depository institution shall supersede such right or power; and

(B) no court may give effect to such right or power with respect to such insured depository institution.

(5) Waiver authority

(A) In general

The Corporation, in its discretion, may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.

(B) Condition

During the period any exemption granted to any insured depository institution under subparagraph (A) or (C) is in effect, such insured depository institution and all other insured depository institution affiliates of such depository institution shall comply fully with the restrictions of sections 371c and 371c–1 of this title without regard to section 371c(d)(1) of this title.

(C) Limited partnerships

(i) In general

The Corporation may, in its discretion, exempt any limited partnership and any affiliate of any limited partnership (other than any insured depository institution which is a majority owned subsidiary of such partnership) from the provisions of this subsection if such limited partnership or affiliate has filed a registration statement with the Securities and Exchange Commission on or before April 10, 1989, indicating that as of the date of such filing such partnership intended to acquire 1 or more insured depository institutions.

(ii) Review and notice

Within 10 business days after the date of submission of any request for an exemption under this subparagraph together with such information as shall be reasonably requested by the Corporation, the Corporation shall make a determination on the request and shall so advise the applicant.

(6) 5-year transition rule

During the 5-year period beginning on August 9, 1989—

(A) no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided by the Corporation or any loss incurred by the Corporation as a result of the default of a Bank Insurance Fund member which was acquired by such Savings Association Insurance Fund member or any affiliate of such member before August 9, 1989; and

(B) no Bank Insurance Fund member shall have such liability with respect to assistance provided by or loss incurred by the Corporation as a result of the default of a Savings Association Insurance Fund member which was acquired by such Bank Insurance Fund member or any affiliate of such member before August 9, 1989.

(7) Exclusion for institutions acquired in debt collections

Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if—

(A) 1 depository institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith; and

(B) during the period beginning on August 9, 1989, and ending upon the expiration of the exclusion, the controlling bank and all other insured depository institution affiliates of such controlling bank comply fully with the restrictions of sections 371c and 371c–1 of this title, without regard to section 371c(d)(1) of this title, in transactions with the acquired insured depository institution.

(8) Exception for certain FSLIC assisted institutions

No depository institution shall have any liability to the Corporation under this subsection as the result of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if—

(A) such affiliate was receiving cash payments from the Federal Savings and Loan Insurance Corporation under an assistance agreement or note entered into before August 9, 1989;

(B) the Federal Savings and Loan Insurance Corporation, or such other entity which

has succeeded to the payment obligations of such Corporation with respect to such assistance agreement or note, is unable to continue such payments; and

(C) such affiliate—

(i) is in default or in need of assistance solely as a result of the failure to meet the payment obligations referred to in subparagraph (B); and

(ii) is not otherwise in breach of the terms of any assistance agreement or note which would authorize the Federal Savings and Loan Insurance Corporation or such other successor entity, pursuant to the terms of such assistance agreement or note, to refuse to make such payments.

(9) Commonly controlled defined

For purposes of this subsection, depository institutions are commonly controlled if—

(A) such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section 1843(f)(6) of this title); or

(B) 1 depository institution is controlled by another depository institution.

(Sept. 21, 1950, ch. 967, §2[5], 64 Stat. 876; Pub. L. 95–369, §6(c)(7), Sept. 17, 1978, 92 Stat. 616; Pub. L. 97–320, title VII, §703(c), Oct. 15, 1982, 96 Stat. 1539; Pub. L. 101–73, title II, §§201(a), 206(a), Aug. 9, 1989, 103 Stat. 187, 195; Pub. L. 102–242, title I, §115(a), title III, §302(e)(1), (2), title V, §501(a), Dec. 19, 1991, 105 Stat. 2249, 2349, 2388; Pub. L. 102–550, title XVI, §§1605(a)(5)(B), 1607(a), Oct. 28, 1992, 106 Stat. 4085, 4089; Pub. L. 102–558, title III, §§303(b)(6)(B), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103–204, §9, Dec. 17, 1993, 107 Stat. 2388; Pub. L. 103–325, title III, §319(b), title VI, §602(a)(2), (3), Sept. 23, 1994, 108 Stat. 2225, 2288; Pub. L. 104–208, div. A, title II, §§2201(a), 2702(i), 2704(d)(14)(B)–(E), Sept. 30, 1996, 110 Stat. 3009–403, 3009–483, 3009–491.)

REFERENCES IN TEXT

Section 2702(a) of the Deposit Insurance Funds Act of 1996, referred to in subsec. (d)(3)(K), is section 2702(a) of Pub. L. 104–208, which is set out as a note under section 1817 of this title.

PRIOR PROVISIONS

Section is derived from subsec. (f)(2) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (b)(5). Pub. L. 104–208, §2704(d)(14)(B), which directed substitution of ''Deposit Insurance Fund,'' for ''the Bank Insurance Fund or the Savings Association Insurance Fund;'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d). Pub. L. 104–208, §2704(d)(14)(C) and (D), which directed the amendment of subsec. (d) by striking out par. (1) designation and heading, redesignating subpar. (A) of par. (1) as par. (1), realigning margin, and substituting ''the reserve ratio of the Deposit Insurance Fund'' for ''reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund'', striking out subpar. (B) of par. (1) and pars. (2) and (3) and adding new par. (2), and redesignating subpar. (C) of par. (1) as par. (3) and realigning margin, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d)(3)(A). Pub. L. 104–208, §2201(a)(1), substituted ''if the transaction is approved by'' for ''with the prior written approval of''.

Subsec. (d)(3)(C). Pub. L. 104–208, §2702(i)(1), substituted ''Except as provided in subparagraph (K), the adjusted attributable deposit amount'' for ''The adjusted attributable deposit amount'' in introductory provisions.

Subsec. (d)(3)(E). Pub. L. 104–208, §2201(a)(2), added cl. (iii), redesignated former cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cls. (i) and (iv), which directed review of any application under the procedures and factors set forth in section 1828(c) of this title and disapproval of any application unless depository institution met all applicable capital requirements, respectively.

Subsec. (d)(3)(G) to (J). Pub. L. 104–208, §2201(a)(3), (4), redesignated subpars. (H) to (J) as (G) to (I), respectively and struck out former subpar. (G) which related to expedited approval of acquisitions.

Subsec. (d)(3)(K). Pub. L. 104–208, §2702(i)(2), added subpar. (K).

Subsec. (e)(5)(A). Pub. L. 104–208, §2704(d)(14)(E)(i), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (e)(6) to (9). Pub. L. 104–208, §2704(d)(14)(E)(ii), (iii), which directed striking out par. (6) and redesignating pars. (7) to (9) as (6) to (8), respectively, was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (b)(5). Pub. L. 103–325, §602(a)(2), substituted comma for semicolon at end.

Subsec. (d)(3)(A). Pub. L. 103–325, §319(b)(1), redesignated cl. (i) formerly entitled ''In general'' as subpar. (A), inserted comma after ''Notwithstanding paragraph (2)(A)'', and struck out heading and text of cl. (ii). Text read as follows: ''If, in connection with any transaction referred to in clause (i), the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the prior written approval of the Board shall be required for such transaction in addition to the approval of any agency referred to in clause (i).''

Subsec. (d)(3)(E)(i). Pub. L. 103–325, §319(b)(2)(A), struck out ''(and, in the event the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the Board)'' after ''responsible agency''.

Subsec. (d)(3)(E)(ii). Pub. L. 103–325, §319(b)(2)(B), struck out ''or Board'' after ''responsible agency''.

Subsec. (d)(3)(E)(iv). Pub. L. 103–325, §319(b)(2)(C), struck out '', and the appropriate Federal banking agency for any depository institution holding company,'' after ''responsible agency'', ''each'' before ''such agency determines'', and '', and any depository institution holding company which controls such institution,'' after ''resulting depository institution''.

Subsec. (d)(3)(F). Pub. L. 103–325, §319(b)(3), substituted ''A Bank'' for ''The Board may not approve any transaction under subparagraph (A) in which the acquiring, assuming, or resulting depository institution is a Bank'' and ''may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A) unless'' for ''unless the Board determines that''.

Subsec. (d)(3)(K). Pub. L. 103–325, §319(b)(4), struck out heading and text of subpar. (K). Text read as follows: ''For purposes of this paragraph, the term 'Board' (other than when such term appears in connection with a reference to the Board of Directors) means the Board of Governors of the Federal Reserve System.''

Subsec. (e)(4). Pub. L. 103–325, §602(a)(3), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins.

1993—Subsec. (d)(2)(A)(ii). Pub. L. 103–204, §9(a), substituted ''before the later of the end'' for ''before the end'' and inserted before period at end ''or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund''.

Subsec. (d)(2)(B)(v). Pub. L. 103–204, §9(b), added cl. (v).

Subsec. (d)(2)(C)(ii), (iii), (3)(I)(i). Pub. L. 103–204, § 9(c), substituted ''moratorium period established by'' for ''5-year period referred to in''.

1992—Subsec. (d)(3)(B). Pub. L. 102–558, § 303(b)(6)(B), amended directory language of Pub. L. 102–242, § 302(e). See 1991 amendment note below. Pub. L. 102–550, § 1605(a)(5)(B), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note below.

Subsec. (d)(3)(K). Pub. L. 102–550, § 1607(a), added subpar. (K).

1991—Pub. L. 102–242, § 115(a), amended section catchline.

Subsec. (a). Pub. L. 102–242, § 115(a), added subsec. (a) consisting of pars. (1) to (6) and struck out former subsec. (a) relating to application for insurance, which consisted of pars. (1) to (7).

Subsec. (d)(3). Pub. L. 102–242, § 501(a), amended par. (3) generally, substituting present provisions consisting of subpars. (A) to (J) for provisions related to optional conversion through merger, which consisted of subpars. (A) to (G).

Subsec. (d)(3)(B)(i). Pub. L. 102–242, § 302(e)(1), as amended by Pub. L. 102–558, § 303(b)(6)(B), substituted ''deposits'' for ''average assessment base'' and ''shall be treated as deposits which are insured by the Savings Association Insurance Fund.'' for ''shall—

''(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Savings Association Insurance Fund members;

''(II) not be taken into account for purposes of any assessment under section 1817 of this title for Bank Insurance Fund members; and

''(III) be treated as deposits which are insured by the Savings Association Insurance Fund.''

Subsec. (d)(3)(B)(ii). Pub. L. 102–242, § 302(e)(2), as added by Pub. L. 102–558, § 303(b)(6)(B), substituted ''deposits'' for ''average assessment base'' and ''shall be treated as deposits which are insured by the Bank Insurance Fund.'' for ''shall—

''(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Bank Insurance Fund members;

''(II) not be taken into account for purposes of any assessment under section 1817 of this title for Savings Association Insurance Fund members; and

''(III) be treated as deposits which are insured by the Bank Insurance Fund.''

1989—Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (a). Pub. L. 101–73, § 206(a)(1)–(4), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and substituted ''Any'' for ''Subject to the provisions of this chapter, any'', inserted ''and State savings association'' after ''any State nonmember bank'' and after ''such State nonmember bank'', ''or savings association'' after ''such bank'', and ''or savings association, and in the case of an application by a State savings association, the Corporation shall notify the Director of the Office of Thrift Supervision of the Corporation's approval of such application'' after ''books of the bank'', and added pars. (2) to (7).

Subsec. (b)(4). Pub. L. 101–73, § 206(a)(5), inserted ''and fitness'' after ''character''.

Subsec. (b)(5) to (8). Pub. L. 101–73, § 206(a)(6), added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsecs. (d), (e). Pub. L. 101–73, § 206(a)(7), added subsecs. (d) and (e).

1982—Subsec. (a). Pub. L. 97–320 inserted provision relating to the determination before the application of an industrial bank or similar institution is approved that it is chartered and operating under provisions substantially comparable to those applicable to banks operating in the same State.

1978—Pub. L. 95–369 designated existing provision as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(14)(B)–(E) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(6)(B) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 302(e)(1), (2) of Pub. L. 102–242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102–242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title.

Section 501(b) of Pub. L. 102–242 provided that: ''The amendment made by subsection (a) to section 5(d)(3)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)(C)] shall apply with respect to semiannual periods beginning after the date of the enactment of this Act [Dec. 19, 1991].''

REPEAL OF DUPLICATIVE PROVISIONS

Section 305 of Pub. L. 102–558 provided that: ''In the event of the enactment of H.R. 5334 (An Act to amend and extend certain laws relating to housing and community development, and for other purposes) [enacted as Pub. L. 102–550], the following provisions of that Act, and the amendments made by such provisions, are repealed, effective on the date of enactment of this Act [Oct. 28, 1992]:

''(1) Section 1603(a)(3) of such Act [amending section 1817 of this title and enacting provisions set out as a note under section 1817 of this title].

''(2) Section 1604(a)(11) of such Act [amending section 3104 of this title].

''(3) Paragraphs (1), (2), and (3) of section 1604(b) of such Act [amending sections 1817, 1834, and 1834a of this title].

''(3) [sic] Paragraphs (2) through (7) of section 1605(a) of such Act [amending sections 1815, 1817, 1818, 1820, 1834, and 1834a of this title and enacting provisions set out as notes under sections 1817, 1834, and 1834a of this title].''

NEWLY INSURED THRIFT PROVISION

Section 206(b) of Pub. L. 101–73 provided that: ''Any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)], as added by section 204(c) of this Act)—

''(1) which was an insured institution (as defined in section 401(a) of the National Housing Act [12 U.S.C. 1724(a)], as in effect before the date of the enactment of this Act [Aug. 9, 1989]) on the day before the date of the enactment of this Act;

''(2) the board of directors of which determined, before April 1, 1987, to terminate such association's status as an insured institution (as so defined) as evidenced in sworn minutes of the board of directors meeting held before such date;

''(3) had insured deposits of less than $11,000,000 on April 1, 1987; and

''(4) was an insured institution (as so defined) for less than 1 year as of April 1, 1987,

may cease to be a Savings Association Insurance Fund member and become a Bank Insurance Fund member at any time during the 2-year period beginning on the date of the enactment of this Act without the approval of the Federal Deposit Insurance Corporation under section 5(d)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(2)] (as added by subsection (a) of this section) and without incurring any liability for any exit or entrance fee imposed under such section 5(d)(2).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 215c, 461, 1441, 1464, 1467a, 1814, 1816, 1821, 3104 of this title; title 26 section 593.

§ 1816. Factors to be considered

The factors that are required, under section 1814 of this title, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 1814 of this title and that are required, under section 1815 of this title, to be considered by the Board of Directors in connection with any determination by such Board pursuant to section 1815 of this title are the following:

(1) The financial history and condition of the depository institution.

(2) The adequacy of the depository institution's capital structure.

(3) The future earnings prospects of the depository institution.

(4) The general character and fitness of the management of the depository institution.

(5) The risk presented by such depository institution to the Bank Insurance Fund or the Savings Association Insurance Fund.

(6) The convenience and needs of the community to be served by such depository institution.

(7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.

(Sept. 21, 1950, ch. 967, § 2[6], 64 Stat. 876; Pub. L. 101–73, title II, § 207, Aug. 9, 1989, 103 Stat. 206; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(F), Sept. 30, 1996, 110 Stat. 3009–491.)

PRIOR PROVISIONS

Section is derived from subsec. (g) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Par. (5). Pub. L. 104–208, which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund'', was not executed. See Effective Date of 1996 Amendment note below.

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''The factors to be enumerated in the certificate required under section 1814 of this title and to be considered by the Board of Directors under section 1815 of this title shall be the following: The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this chapter.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1815, 1828 of this title.

§ 1817. Assessments

(a) Reports of condition; access to reports

(1) Each insured State nonmember bank (except a District bank) and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or 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 bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence 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. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (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 section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days

after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this paragraph.

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisions or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish to the Comptroller of the Currency, the[1] Director of the Office of Thrift Supervision, the[1] Federal Housing Finance Board, any[1] Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.

(B) ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after agreement with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision, as appropriate, may deem advisable for insurance purposes.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Two dates shall be selected within the semiannual period of January to June inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in July pursuant to subsection (c) of this section, and two dates shall be selected within the semiannual period of July to December inclusive, and the reports on such dates shall be the basis for the certified statement to be filed in January pursuant to subsection (c) of this section. The deposit liabilities shall be reported in said reports of conditions in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of condition shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured depository institution shall report the total amount of the liability of the depository institution for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, according to the definition of the term ''deposit'' in and pursuant to subsection (*l*) of section 1813 of this title without any deduction for indebtedness of depositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting depository institution: *Provided*, That the depository institution in reporting such deposits may (i) subtract from the deposit balance due to any depository institution the deposit balance due from the same depository institution (other than trust funds deposited by either depository institution) and any cash items in the process of collection due from or due to such depository institutions shall be included in determining such net balance, except that balances of time deposits of any depository institution and any balances standing to the credit of private depository institutions, of depository institutions in foreign countries, of foreign branches of other American depository institutions, and of American branches of foreign banks shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the depository institution for deposit in any other office of the depository institution: *And provided further*, That outstanding drafts (including advices and authorizations to charge depository institution's balance in another depository institution) drawn in the regular course of business by the reporting depository institution on depository institutions need not be reported as deposit liabilities. The amount of trust funds held in the depository institution's own trust department, which the reporting depository institution keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the

[1] So in original. Probably should be preceded by ''to''.

loans for which such deposits are assigned or pledged to assure repayment.

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account, and savings deposits; and demand deposits shall consist of all deposits other than time and savings deposits.

(6) LIFELINE ACCOUNT DEPOSITS.—In the reports of condition required to be reported under this subsection, the deposits in lifeline accounts (as defined in section 1834(a)(3)(C) of this title) shall be reported separately.

(7) The Board of Directors, after consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and the Board of Governors of the Federal Reserve System, may by regulation define the terms ''cash items'' and ''process of collection'', and shall classify deposits as ''time'', ''savings'', and ''demand'' deposits, for the purposes of this section.

(8) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.

(9) DATA COLLECTIONS.—In addition to or in connection with any other report required under this subsection, the Corporation shall take such action as may be necessary to ensure that—

(A) each insured depository institution maintains; and

(B) the Corporation receives on a regular basis from such institution,

information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution. In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in section 1831*o* of this title) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this chapter.

(10) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a transaction with a corporation as a highly leveraged transaction solely because such corporation is or has been a debtor or bankrupt under title 11, if, after confirmation of a plan of reorganization, such corporation would not otherwise be highly leveraged.

(b) Assessments

(1) Risk-based assessment system

(A) Risk-based assessment system required

The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

(B) Private reinsurance authorized

In carrying out this paragraph, the Corporation may—

(i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and

(ii) base that institution's semiannual assessment (in whole or in part) on the cost of the reinsurance.

(C) "Risk-based assessment system" defined

For purposes of this paragraph, the term ''risk-based assessment system'' means a system for calculating a depository institution's semiannual assessment based on—

(i) the probability that the deposit insurance fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the deposit insurance fund.

(D) Separate assessment systems

The Board of Directors may establish separate risk-based assessment systems for large and small members of each deposit insurance fund.

(2) Setting assessments

(A) Achieving and maintaining designated reserve ratio

(i) In general

The Board of Directors shall set semiannual assessments for insured depository institutions when necessary, and only to the extent necessary—

(I) to maintain the reserve ratio of each deposit insurance fund at the designated reserve ratio; or

(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio as provided in paragraph (3).

(ii) Factors to be considered

In carrying out clause (i), the Board of Directors shall consider the deposit insurance fund's—

(I) expected operating expenses,

(II) case resolution expenditures and income,

(III) the effect of assessments on members' earnings and capital, and

(IV) any other factors that the Board of Directors may deem appropriate.

(iii) Limitation on assessment

Except as provided in clause (v), the Board of Directors shall not set semiannual assessments with respect to a deposit insurance fund in excess of the amount needed—

(I) to maintain the reserve ratio of the fund at the designated reserve ratio; or

(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio.

(iv) Designated reserve ratio defined

The designated reserve ratio of each deposit insurance fund for each year shall be—

(I) 1.25 percent of estimated insured deposits; or

(II) a higher percentage of estimated insured deposits that the Board of Directors determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the fund.

(v) Exception to limitation on assessments

The Board of Directors may set semiannual assessments in excess of the amount permitted under clauses (i) and (iii) with respect to insured depository institutions that exhibit financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or are not well capitalized, as that term is defined in section 1831*o* of this title.

(B) Independent treatment of funds

The Board of Directors shall—

(i) set semiannual assessments for members of each deposit insurance fund independently from semiannual assessments for members of any other deposit insurance fund; and

(ii) set the designated reserve ratio of each deposit insurance fund independently from the designated reserve ratio of any other deposit insurance fund.

(C) Notice of assessments

The Corporation shall notify each insured depository institution of that institution's semiannual assessment.

(D) Repealed. Pub. L. 104–208, div. A, title II, § 2703(b), Sept. 30, 1996, 110 Stat. 3009–485

(E) Minimum assessments

The Corporation shall design the risk-based assessment system for any deposit insurance fund so that, if the Corporation has borrowings outstanding under section 1824 of this title on behalf of that fund or the reserve ratio of that fund remains below the designated reserve ratio, the total amount raised by semiannual assessments on members of that fund shall be not less than the total amount that would have been raised if—

(i) this subsection as in effect on July 15, 1991 remained in effect;

(ii) the assessment rate in effect on July 15, 1991 remained in effect; and

(iii) notwithstanding any other provision of this subsection, during the period beginning on September 30, 1996, and ending on December 31, 1998, the assessment rate for a Savings Association Insurance Fund member may not be less than the assessment rate for a Bank Insurance Fund member that poses a comparable risk to the deposit insurance fund.

(F) Transition rule for Savings Association Insurance Fund

With respect to the Savings Association Insurance Fund, during the period beginning on the effective date of the amendments made by section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 and ending on December 31, 1997—

(i) subparagraph (A)(i)(II) shall apply as if such subparagraph did not include ''as provided in paragraph (3)''; and

(ii) subparagraph (E) shall be applied by substituting ''if this subsection as in effect on July 15, 1991 remained in effect.'' for ''if—'' and all that follows through clause (ii).

(G) Special rule until the insurance funds achieve the designated reserve ratio

Until a deposit insurance fund achieves the designated reserve ratio, the Corporation may limit the maximum assessment on insured depository institutions under the risk-based assessment system authorized under paragraph (1) to not less than 10 basis points above the average assessment on insured depository institutions under that system.

(H) Bank Enterprise Act requirement

The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to lifeline accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment at a rate determined in accordance with such Act.

(3) Special rule for recapitalizing undercapitalized funds

(A) In general

Except as provided in paragraph (2)(F), if the reserve ratio of any deposit insurance fund is less than the designated reserve ratio under paragraph (2)(A)(iv), the Board of Directors shall set semiannual assessment rates for members of that fund—

(i) that are sufficient to increase the reserve ratio for that fund to the designated reserve ratio not later than 1 year after such rates are set; or

(ii) in accordance with a schedule promulgated by the Corporation under subparagraph (B).

(B) Recapitalization schedules

For purposes of subparagraph (A)(ii), the Corporation shall by regulation promulgate

a schedule that specifies, at semiannual intervals, target reserve ratios for that fund, culminating in a reserve ratio that is equal to the designated reserve ratio not later than 15 years after the date on which the schedule is implemented.

(C) Amending schedule

The Corporation may, by regulation, amend a schedule promulgated under subparagraph (B) and such amendment may extend the date specified in subparagraph (B) to such later date as the Corporation determines will, over time, maximize the amount of semiannual assessments received by the Savings Association Insurance Fund, net of insurance losses incurred by the Fund.

(D) Application to SAIF members

This paragraph shall become applicable to Savings Association Insurance Fund members on January 1, 1998.

(4) "Semiannual period" defined

For purposes of this section, the term ''semiannual period'' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.

(5) Records to be maintained

Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of the institution's semiannual assessments. No insured depository institution shall be required to retain those records for that purpose for a period of more than 5 years from the date of the filing of any certified statement, except that when there is a dispute between the insured depository institution and the Corporation over the amount of any assessment, the depository institution shall retain the records until final determination of the issue.

(6) Emergency special assessments

In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment—

(A) is necessary—

(i) to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under section 1824(a) of this title in accordance with the repayment schedule in effect under section 1824(c) of this title during the period with respect to which such assessment is imposed;

(ii) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from Bank Insurance Fund members under section 1824(d) of this title; or

(iii) for any other purpose the Corporation may deem necessary; and

(B) is allocated between Bank Insurance Fund members and Savings Association Insurance Fund members in amounts which reflect the degree to which the proceeds of the amounts borrowed are to be used for the benefit of the respective insurance funds.

(7) Community enterprise credits

The Corporation shall allow a credit against any semiannual assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board under section 233(a)(1) of the Bank Enterprise Act of 1991 [12 U.S.C. 1834a(a)(1)] in the amount determined by such Board by regulation.

(c) Certified statements; payments

(1) Certified statements required

(A) In general

Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's semiannual assessment.

(B) Form of certification

The certified statement required under subparagraph (A) shall—

(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and

(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and belief, the statement is true, correct and complete, and in accordance with this chapter and regulations issued hereunder.

(2) Payments required

(A) In general

Each insured depository institution shall pay to the Corporation the semiannual assessment imposed under subsection (b) of this section.

(B) Form of payment

The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

(3) Newly insured institutions

To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the semiannual period in which a depository institution becomes insured.

(4) Penalty for failure to make accurate certified statement

(A) First tier

Any insured depository institution which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement; or

(ii) submits the statement at a time which is minimally after the time required in such paragraph,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false and misleading information is not corrected. The institution shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) Second tier

Any insured depository institution which fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement in a manner not described in subparagraph (A) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false and misleading information is not corrected.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or with reckless disregard for the accuracy of any certified statement described in paragraph (1) submits a false or misleading certified statement under paragraph (1), the Corporation may assess a penalty of not more than $1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) Assessment procedure

Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (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 section.

(E) Hearing

Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 1818(h) of this title shall apply to any proceeding under this subparagraph.

(d) Corporation exempt from apportionment

Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31 or under any other authority.

(e) Refunds

(1) Overpayments

In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

(A) refund the amount of the excess payment to the insured depository institution; or

(B) credit such excess amount toward the payment of subsequent semiannual assessments until such credit is exhausted.

(2) Balance in insurance fund in excess of designated reserve

(A) In general

Subject to subparagraphs (B) and (C), if, as of the end of any semiannual assessment period beginning after September 30, 1996, the amount of the actual reserves in—

(i) the Bank Insurance Fund (until the merger of such fund into the Deposit Insurance Fund pursuant to section 2704 of the Deposit Insurance Funds Act of 1996); or

(ii) the Deposit Insurance Fund (after the establishment of such fund),

exceeds the balance required to meet the designated reserve ratio applicable with respect to such fund, such excess amount shall be refunded to insured depository institutions by the Corporation on such basis as the Board of Directors determines to be appropriate, taking into account the factors considered under the risk-based assessment system.

(B) Refund not to exceed previous semiannual assessment

The amount of any refund under this paragraph to any member of a deposit insurance fund for any semiannual assessment period may not exceed the total amount of assessments paid by such member to the insurance fund with respect to such period.

(C) Refund limitation for certain institutions

No refund may be made under this paragraph with respect to the amount of any assessment paid for any semiannual assessment period by any insured depository institution described in clause (v) of subsection (b)(2)(A) of this section.

(f) Action against depository institutions failing to file certified statements

Any insured depository institution which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable by the depository institution to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the depository institution and any officer or officers thereof in any court of the United States of competent jurisdiction in the District or Territory in which such depository institution is located.

(g) Action by Corporation to recover assessments

The Corporation, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured de-

pository institution to the Corporation, whether or not such depository institution shall have made any such report of condition under subsection (a) of this section or filed any such certified statement and whether or not suit shall have been brought to compel the depository institution to make any such report or file any such statement. No action or proceeding shall be brought for the recovery of any assessment due to the Corporation, or for the recovery of any amount paid to the Corporation in excess of the amount due to it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made, except where the insured depository institution has made or filed with the Corporation a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of assessment, in which case the claim shall not be deemed to have accrued until the discovery by the Corporation that the certified statement is false or fraudulent: *Provided, however*, That where a cause of action has already accrued, and the period herein prescribed within which an action may be brought has expired, or will expire within one year from September 21, 1950, an action may be brought on such cause of action within one year from September 21, 1950: *And provided further*, That no action or proceeding shall be brought for the recovery of any assessment on deposits alleged to have been omitted from the assessment base of any insured depository institution for any year prior to 1945 except that any claim of the Corporation for the payment of any assessment may be offset by it against any claim of the depository institution for the overpayment of any assessment.

(h) Forfeiture of rights for failure to comply with law

Should any national member bank or any insured national nonmember bank fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by such bank under any provision of this section, or fail to pay any assessment required to be paid by such bank under any provision of this chapter, and should the bank not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the bank, citing this subsection, and stating that the bank has failed to make any report of condition under subsection (a) of this section or to file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under the National Bank Act, as amended [12 U.S.C. 21 et seq.], the Federal Reserve Act, as amended [12 U.S.C. 221 et seq.], or this chapter, shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged in the manner provided in the sixth paragraph of section 2 of the Federal Reserve Act, as amended [12 U.S.C. 501a]. The remedies provided in this subsection and in subsections (f) and (g) of this section shall not be construed as limiting any other remedies against any insured depository institution, but shall be in addition thereto.

(i) Insurance of trust funds

(1) In general

Trust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed $100,000 for each trust estate.

(2) Interbank deposits

Trust funds described in paragraph (1) which are deposited by the fiduciary depository institution in another insured depository institution shall be similarly insured to the fiduciary depository institution according to the trust estates represented.

(3) Bank deposit financial assistance program

Notwithstanding paragraph (1), funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy shall be separately insured in an amount not to exceed $100,000 for each insured depository institution depositing such funds.

(4) Regulations

The Board of Directors may prescribe such regulations as may be necessary to clarify the insurance coverage under this subsection and to prescribe the manner of reporting and depositing such trust funds.

(j) Change in control of insured depository institutions

(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue. The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action.

(2)(A) NOTICE TO STATE AGENCY.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State depository institution supervisory agency if the depository institution the voting shares of which are sought to be acquired is a State depository institution, and shall allow thirty days within which the views and recommendations of such State depository institution supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable default of the depository institution involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this paragraph or, if a copy of the notice is forwarded to the State depository institution supervisory agency, such Federal banking agency may request that the views and recommendations of such State depository institution supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, unless such agency determines that an emergency exists, within a reasonable period of time—

(i) publish the name of the insured depository institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank[2] proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.[2]

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank[2] to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a descrip-

[2] So in original. Probably should be ''depository institution''.

tion of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank,[3] to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank[3] or prejudice the interests of the depositors of the bank;[3]

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank;[3]

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or

(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

(8) For the purposes of this subsection, the term—

(A) ''person'' means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) ''control'' means the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution.

(9) REPORTING OF STOCK LOANS.—

(A) REPORT REQUIRED.—Any foreign bank, or any affiliate thereof, that has credit outstanding to any person or group of persons which is secured, directly or indirectly, by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for such insured depository institution if the extensions of credit by the foreign bank or any affiliate thereof, in the aggregate, are secured, directly or indirectly, by 25 percent or more of any class of shares of the same insured depository institution.

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

(i) FOREIGN BANK.—The terms ''foreign bank'' and ''affiliate'' have the same meanings as in section 3101 of this title.

(ii) CREDIT OUTSTANDING.—The term ''credit outstanding'' includes—

(I) any loan or extension of credit,

(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

(III) any other type of transaction that extends credit or financing to the person or group of persons.

(iii) GROUP OF PERSONS.—The term ''group of persons'' includes any number of persons that the foreign bank or any affiliate thereof reasonably believes—

(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

(II) have made, or propose to make, a joint filing under section 78m of title 15 regarding ownership of the shares of the same insured depository institution.

(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the foreign bank or any affiliate thereof as principal shall be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of subparagraph (A).

(D) REPORT REQUIREMENTS.—

(i) TIMING OF REPORT.—The report required under this paragraph shall be a consolidated report on behalf of the foreign bank and all affiliates thereof, and shall be filed in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of shares of an insured depository institution.

[3] So in original. Probably should be ''depository institution''.

(ii) CONTENT OF REPORT.—The report under this paragraph shall indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(iii) COPY TO OTHER AGENCIES.—A copy of any report under this paragraph shall be filed with the appropriate Federal banking agency for the foreign bank or any affiliate thereof (if other than the agency receiving the report under this paragraph).

(iv) OTHER INFORMATION.—Each appropriate Federal banking agency may require any additional information necessary to carry out the agency's supervisory responsibilities.

(E) EXCEPTIONS.—

(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a foreign bank or any affiliate thereof shall not be required to report a transaction under this paragraph if the person or group of persons referred to in such subparagraph has disclosed the amount borrowed from such foreign bank or any affiliate thereof and the security interest of the foreign bank or any affiliate thereof to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], section 1467a of this title, or any other application filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a foreign bank and any affiliate thereof shall not be required to report a transaction involving—

(I) a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more; or

(II) stock issued by a newly chartered bank before the bank's opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured depository institution shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 1818(n) of this title in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C) JURISDICTION.—

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 1818(n) of this title.

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.

The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a

depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection 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 depository institution (whether such date occurs before, on, or after August 9, 1989).

(16) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency under this subsection, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any person who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such institution; or

(III) results in pecuniary gain or other benefit to such person,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any person who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than a depository institution, an amount to not exceed $1,000,000; and

(ii) in the case of a depository institution, an amount not to exceed the lesser of—

(I) $1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(F) HEARING.—The depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or other person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this paragraph.

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

(17) EXCEPTIONS.—This subsection shall not apply with respect to a transaction which is subject to—

(A) section 1842 of this title;

(B) section 1828(c) of this title; or

(C) section 1467a of this title.

(18) APPLICABILITY OF CHANGE IN CONTROL PROVISIONS TO OTHER INSTITUTIONS.—For purposes of this subsection, the term ''insured depository institution'' includes—

(A) any depository institution holding company; and

(B) any other company which controls an insured depository institution and is not a depository institution holding company.

(k) Federal banking agency rules and regulations for reports and public disclosure by banks of extension of credit to executive officers or principal shareholders or the related interests of such persons

The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or principal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

(*l*) Designation of fund membership for newly insured depository institutions; definitions

For purposes of this section:

(1) Bank Insurance Fund

Any institution which—

(A) becomes an insured depository institution; and

(B) does not become a Savings Association Insurance Fund member pursuant to paragraph (2),

shall be a Bank Insurance Fund member.

(2) Savings Association Insurance Fund

Any savings association, other than any Federal savings bank chartered pursuant to section 1464(*o*) of this title, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

(3) Transition provision

(A) Bank Insurance Fund

Any depository institution the deposits of which were insured by the Federal Deposit

Insurance Corporation on the day before August 9, 1989, including—

(i) any Federal savings bank chartered pursuant to section 1464(*o*) of this title; and

(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of August 9, 1989.

(B) Savings Association Insurance Fund

Any savings association which is an insured depository institution by operation of section 1814(a)(2) of this title shall be a Savings Association Insurance Fund member as of August 9, 1989.

(4) Bank Insurance Fund member

The term ''Bank Insurance Fund member'' means any depository institution the deposits of which are insured by the Bank Insurance Fund.

(5) Savings Association Insurance Fund member

The term ''Savings Association Insurance Fund member'' means any depository institution the deposits of which are insured by the Savings Association Insurance Fund.

(6) Bank Insurance Fund reserve ratio

The term ''Bank Insurance Fund reserve ratio'' means the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members.

(7) Savings Association Insurance Fund reserve ratio

The term ''Savings Association Insurance Fund reserve ratio'' means the ratio of the net worth of the Savings Association Insurance Fund to the value of the aggregate estimated insured deposits held in all Savings Association Insurance Fund members.

(m) Secondary reserve offsets against premiums

(1) Offsets in calendar years beginning before 1993

Subject to the maximum amount limitation contained in paragraph (2) and notwithstanding any other provision of law, any insured savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) of this section for any calendar year beginning before 1993.

(2) Annual maximum amount limitation

The amount of any offset allowed for any savings association under paragraph (1) for any calendar year beginning before 1993 shall not exceed an amount which is equal to 20 percent of such association's pro rata share of the statutorily prescribed amount (as computed for such calendar year).

(3) Offsets in calendar years beginning after 1992

Notwithstanding any other provision of law, a savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) of this section for any calendar year beginning after 1992.

(4) Transferability

No right, title, or interest of any insured depository institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to the extent that the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this paragraph.

(5) Pro rata distribution on termination of insured status

If—

(A) the status of any savings association as an insured depository institution is terminated pursuant to any provision of section 1818 of this title or the insurance of accounts of any such institution is otherwise terminated;

(B) a receiver or other legal custodian is appointed for the purpose of liquidation or winding up the affairs of any savings association; or

(C) the Corporation makes a determination that for the purposes of this subsection any savings association has otherwise gone into liquidation,

the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, existing or arising before such payment in cash. Such payment or such application need not be made to the extent that the provisions of the exception in paragraph (4) are applicable.

(6) "Statutorily prescribed amount" defined

For purposes of this subsection, the term ''statutorily prescribed amount'' means, with respect to any calendar year which ends after August 9, 1989—

(A) $823,705,000, minus

(B) the sum of—

(i) the aggregate amount of offsets made before August 9, 1989, by all insured institutions under section 404(e)(2)[4] of the National Housing Act [12 U.S.C. 1727(e)(2)] (as in effect before August 9, 1989); and

(ii) the aggregate amount of offsets made by all savings associations under this subsection before the beginning of such calendar year.

(7) Savings association's pro rata amount

For purposes of this subsection, any savings association's pro rata share of the statutorily prescribed amount is the percentage which is

[4] See References in Text note below.

equal to such association's share of the secondary reserve as determined under section 404(e)[4] of the National Housing Act on the day before the date on which the Federal Savings and Loan Insurance Corporation ceased to recognize the secondary reserve (as such Act [12 U.S.C. 1701 et seq.] was in effect on the day before such date).

(8) Year of enactment rule

With respect to the calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, the Corporation shall make such adjustments as may be necessary—

(A) in the computation of the statutorily prescribed amount which shall be applicable for the remainder of such calendar year after taking into account the aggregate amount of offsets by all insured institutions under section 404(e)(2)[4] of the National Housing Act [12 U.S.C. 1727(e)(2)] (as in effect before August 9, 1989) after the beginning of such calendar year and before August 9, 1989; and

(B) in the computation of the maximum amount of any savings association's offset for such calendar year under paragraph (1) after taking into account—

(i) the amount of any offset by such savings association under section 404(e)(2)[4] of the National Housing Act (as in effect before August 9, 1989) after the beginning of such calendar year and before August 9, 1989; and

(ii) the change of such association's premium year from the 1-year period applicable under section 404(b)[4] of the National Housing Act (as in effect before August 9, 1989) to a calendar year basis.

(n) Collections on behalf of Director of Office of Thrift Supervision

When requested by the Director of the Office of Thrift Supervision, the Corporation shall collect on behalf of the Director assessments on savings associations levied by the Director under section 1467 of this title. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Director shall be in addition to any amounts assessed by the Corporation, the Financing Corporation, and the Resolution Funding Corporation.

(Sept. 21, 1950, ch. 967, §2[7], 64 Stat. 876; Pub. L. 86–671, §§2, 3, July 14, 1960, 74 Stat. 547–551; Pub. L. 88–593, Sept. 12, 1964, 78 Stat. 940; Pub. L. 89–695, title II, §201, title III, §301(b), Oct. 16, 1966, 80 Stat. 1046, 1055; Pub. L. 91–151, §7(a)(2), Dec. 23, 1969, 83 Stat. 375; Pub. L. 91–609, title IX, §910(g), (h), Dec. 31, 1970, 84 Stat. 1812; Pub. L. 93–495, title I, §§101(a)(2), 102(a)(2), Oct. 28, 1974, 88 Stat. 1500, 1502; Pub. L. 95–369, §6(c)(8)–(13), Sept. 17, 1978, 92 Stat. 617, 618; Pub. L. 95–630, title III, §§302, 310, title VI, §602, title IX, §901, Nov. 10, 1978, 92 Stat. 3676, 3678, 3683, 3693; Pub. L. 96–221, title III, §308(a)(1)(B), (d), Mar. 31, 1980, 94 Stat. 147, 148; Pub. L. 97–110, title I, §103(b), Dec. 26, 1981, 95 Stat. 1514; Pub. L. 97–320, title I, §§113(d)–(f), (q), 117, title IV, §429, Oct. 15, 1982, 96 Stat. 1473, 1475, 1479, 1527; Pub. L. 99–570, title I, §1360, Oct. 27, 1986, 100 Stat. 3207–29; Pub. L. 100–86, title V, §505(a), Aug. 10, 1987, 101 Stat. 633; Pub. L. 101–73, title II, §§201, 208, title IX, §§905(c), 907(d), 911(c), 931(a), Aug. 9, 1989, 103 Stat. 187, 206, 460, 468, 479, 493; Pub. L. 101–508, title II, §§2002–2004, Nov. 5, 1990, 104 Stat. 1388–14—1388–16; Pub. L. 102–242, title I, §§103(b), 104, 113(c)(1), 141(c), title II, §§205, 232(b), 233(c), title III, §§302(a), (b), (e)(3), (4), formerly (e)(2), (3), 311(a)(2), (b)(3), 313(a), title IV, §474, Dec. 19, 1991, 105 Stat. 2238, 2247, 2277, 2292, 2310, 2314, 2345, 2348, 2349, 2363, 2365, 2368, 2386; Pub. L. 102–550, title IX, §931(a), (b), title XVI, §§1603(a)(1), (3), 1604(b)(1), (3), 1605(a)(2), (5)(A), (6), (b)(1), (2), 1606(i)(1), Oct. 28, 1992, 106 Stat. 3888, 4078, 4083, 4085–4087, 4089; Pub. L. 102–558, title III, §§303(a), (b)(1), (3), (6)(A), (7), (8), 305, Oct. 28, 1992, 106 Stat. 4224–4226; Pub. L. 103–204, §§8(h), 38(a), Dec. 17, 1993, 107 Stat. 2388, 2416; Pub. L. 103–325, title III, §§305(b), 308(b), 348, title VI, §602(a)(4)–(10), Sept. 23, 1994, 108 Stat. 2217, 2218, 2241, 2288; Pub. L. 104–208, div. A, title II, §§2226, 2703(b), 2704(d)(6)(B), (14)(G), 2706–2708, Sept. 30, 1996, 110 Stat. 3009–417, 3009–485, 3009–488, 3009–491, 3009–496, 3009–497; Pub. L. 106–569, title XII, §1231(a), Dec. 27, 2000, 114 Stat. 3036.)

REFERENCES IN TEXT

For effective date of amendments made by section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (b)(2)(F), see section 302(g) of Pub. L. 102–242, set out as an Effective Date of 1991 Amendment note below.

The Bank Enterprise Act of 1991, referred to in subsec. (b)(2)(H), is subtitle C (§§231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308–2315, which enacted sections 1834 to 1834b of this title, amended this section, and enacted provisions set out as a note under section 1811 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

Section 2704 of the Deposit Insurance Funds Act of 1996, referred to in subsec. (e)(2)(A)(i), is section 2704 of Pub. L. 104–208. For complete classification of this section to the Code, see section 2704(c) of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment note under section 1821 of this title and Tables.

The National Bank Act, referred to in subsec. (h), is act June 3, 1864, ch. 106, 13 Stat. 99, as amended, which is classified principally to chapter 2 (§21 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 38 of this title.

The Federal Reserve Act, referred to in subsec. (h), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (j)(9)(E)(i), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

For effective date of the Change in Bank Control Act of 1978 [title VI of Pub. L. 95–630], referred to in subsec. (j)(14), see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

The National Housing Act, referred to in subsec. (m)(6) to (8), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§1701 et seq.) of this title. Section 404 of the National Housing Act, is section 1727 of this title, as such section was in effect prior to repeal by Pub. L. 101–73, title IV, §407, Aug. 9, 1989, 103 Stat. 363. For complete

classification of this Act to the Code, see section 1701 of this title and Tables.

The calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, referred to in subsec. (m)(8), means the calendar year in which Pub. L. 101–73 was enacted. Such Act was approved Aug. 9, 1989.

PRIOR PROVISIONS

Section is derived from subsec. (h) of former section 264 of this title. See Codification note under section 1811 of this title.

AMENDMENTS

2000—Subsec. (b)(2)(E)(iii). Pub. L. 106–569 amended directory language of Pub. L. 104–208, § 2707. See 1996 Amendment note below.

1996—Subsec. (b)(1)(D). Pub. L. 104–208, § 2704(d)(14)(G)(i), which directed substitution of ''the Deposit Insurance Fund'' for ''each deposit insurance fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(A)(i). Pub. L. 104–208, § 2708(a), inserted ''when necessary, and only to the extent necessary'' after ''insured depository institutions'' in introductory provisions.

Subsec. (b)(2)(A)(i)(I). Pub. L. 104–208, § 2704(d)(14)(G)(ii), which directed substitution of ''the Deposit Insurance Fund'' for ''each deposit insurance fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(A)(iii). Pub. L. 104–208, § 2708(b), amended heading and text of cl. (iii) generally. Prior to amendment, text read as follows: ''The semiannual assessment for each member of a deposit insurance fund shall be not less than $1,000.''

Pub. L. 104–208, § 2704(d)(14)(G)(iii), which directed substitution of ''the Deposit Insurance Fund'' for ''a deposit insurance fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(A)(iv). Pub. L. 104–208, § 2704(d)(14)(G)(ii), (iv), which directed substitution of ''the Deposit Insurance Fund'' for ''each deposit insurance fund'' and striking out cl. (iv), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(A)(v). Pub. L. 104–208, § 2708(c), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 104–208, § 2704(d)(6)(B)(iii), which directed the striking of subpar. (B) and the redesignation of subpar. (C) as (B), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(C). Pub. L. 104–208, § 2704(d)(6)(B)(iii), (14)(G)(v), which directed the redesignation of subpar. (E) as (C) and substitution of ''the Deposit Insurance Fund'' for ''any deposit insurance fund'' and ''the Deposit Insurance Fund'' for ''that fund'' wherever appearing, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(D). Pub. L. 104–208, § 2704(d)(6)(B)(iii), (14)(G)(vi), which directed the redesignation of subpar. (G) as (D) and substitution of ''fund achieves'' for ''funds achieve'' in heading and ''the Deposit Insurance Fund'' for ''a deposit insurance fund'' in text, was not executed. See Effective Date of 1996 Amendment note below.

Pub. L. 104–208, § 2703(b), struck out heading and text of subpar. (D). Text read as follows: ''Notwithstanding any other provision of this paragraph, amounts assessed by the Financing Corporation under section 1441 of this title against Savings Association Insurance Fund members shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.''

Subsec. (b)(2)(E). Pub. L. 104–208, § 2704(d)(6)(B)(iii), which directed the redesignation of subpar. (H) as (E), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(2)(E)(iii). Pub. L. 104–208, § 2707, as amended by Pub. L. 106–569, added cl. (iii).

Subsec. (b)(2)(F) to (H). Pub. L. 104–208, § 2704(d)(6)(B)(iii), which directed the striking of subpar. (F) and the redesignation of subpars. (G) and (H) as (D) and (E), respectively, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(3). Pub. L. 104–208, § 2704(d)(14)(G)(vii)(I), which directed substitution of ''fund'' for ''funds'' in heading, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 104–208, § 2704(d)(14)(G)(vii)(II)–(V), which directed substitution of ''If'' for ''Except as provided in paragraph (2)(F), if'', ''the Deposit Insurance Fund'' for ''any deposit insurance fund'', and ''insured depository institutions'' for ''members of that fund'' in introductory provisions and directed substitution of ''the Deposit Insurance Fund'' for ''that fund'' in cl. (i), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(3)(B). Pub. L. 104–208, § 2704(d)(14)(G)(vii)(III), which directed substitution of ''the Deposit Insurance Fund'' for ''that fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(3)(C), (D). Pub. L. 104–208, § 2704(d)(14)(G)(vii)(VI), which directed the striking of subpars. (C) and (D) and the addition of a new subpar. (C), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(6). Pub. L. 104–208, § 2704(d)(14)(G)(viii), which directed the amendment of par. (6) by substituting ''any such assessment is necessary'' for ''any such assessment'' in introductory provisions, striking subpar. (A) designation, introductory provisions, and subpar. (B), redesignating cls. (i) to (iii) of subpar. (A) as subpars. (A) to (C), respectively, realigning margins, and substituting period for ''; and'' at end of subpar. (C), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (e). Pub. L. 104–208, § 2706, inserted heading and amended text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Corporation (1) may refund to an insured depository institution any payment of assessment in excess of the amount due to the Corporation or (2) may credit such excess toward the payment of the assessment next becoming due from such depository institution and upon succeeding assessments until the credit is exhausted.''

Subsec. (j)(9)(A). Pub. L. 104–208, § 2226(1), substituted ''foreign bank, or any affiliate thereof,'' for ''financial institution and any affiliate of any financial institution'' and ''by the foreign bank or any affiliate thereof'' for ''by the financial institution and such institution's affiliates''.

Subsec. (j)(9)(B). Pub. L. 104–208, § 2226(2)(A), substituted ''paragraph, the following definitions shall apply:'' for ''paragraph—'' in introductory provisions.

Subsec. (j)(9)(B)(i). Pub. L. 104–208, § 2226(2)(B), added cl. (i) and struck out heading and text of former cl. (i). Text read as follows: ''The term 'financial institution' means any insured depository institution and any foreign bank that is subject to the provisions of the Bank Holding Company Act of 1956 by virtue of section 3106(a) of this title.''

Subsec. (j)(9)(B)(iii). Pub. L. 104–208, § 2226(2)(C), substituted ''foreign bank or any affiliate thereof'' for ''financial institution'' in introductory provisions.

Subsec. (j)(9)(C). Pub. L. 104–208, § 2226(3), substituted ''foreign bank or any affiliate thereof'' for ''financial institution or any of its affiliates'' before ''as principal'' and for ''financial institution or its affiliates'' before ''has a security interest''.

Subsec. (j)(9)(D)(i). Pub. L. 104–208, § 2226(4)(A), substituted ''the foreign bank and all affiliates thereof'' for ''the financial institution and all affiliates of the institution'' and ''foreign bank or affiliate thereof'' for ''financial institution or any such affiliate''.

Subsec. (j)(9)(D)(ii), (iii). Pub. L. 104–208, § 2226(4)(B), (C), substituted ''foreign bank and any affiliate thereof'' for ''financial institution and any affiliate of such institution'' before period at end of cl. (ii) and ''foreign

bank or any affiliate thereof'' for ''financial institution'' before parenthetical at end of cl. (iii).

Subsec. (j)(9)(E)(i). Pub. L. 104–208, §2226(5)(A), substituted ''subparagraph (A), a foreign bank or any affiliate thereof'' for ''subparagraph (A), a financial institution and the affiliates of such institution'' and substituted ''foreign bank or any affiliate thereof'' for ''institution or affiliate'' in two places.

Subsec. (j)(9)(E)(ii). Pub. L. 104–208, §2226(5)(B), substituted ''foreign bank and any affiliate thereof'' for ''financial institution and any affiliate of such institution''.

Subsecs. (*l*) to (n). Pub. L. 104–208, §2704(d)(6)(B)(i), (ii), which directed the striking of subsec. (*l*) and the redesignation of subsecs. (m) and (n) as (*l*) and (m), respectively, was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (a)(1). Pub. L. 103–325, §308(b), struck out after third sentence ''The Board of Directors may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct.''

Subsec. (a)(2)(A). Pub. L. 103–325, §305(b), inserted ''and, with respect to any State depository institution, any appropriate State bank supervisor for such institution,'' after ''The Corporation'' in first sentence.

Subsec. (a)(3). Pub. L. 103–325, §602(a)(4), struck out ''Chairman of the'' before ''Director of the Office of Thrift Supervision''.

Subsec. (a)(9). Pub. L. 103–325, §348, inserted at end ''In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in section 1831*o* of this title) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this chapter.''

Subsec. (b)(3)(C). Pub. L. 103–325, §602(a)(5), struck out first period at end.

Subsec. (j)(2)(A). Pub. L. 103–325, §602(a)(6), in third sentence substituted ''this paragraph'' for ''this section (j)(2)'' and ''this subsection (j)(2)'', respectively.

Subsec. (j)(7)(A). Pub. L. 103–325, §602(a)(7), substituted ''monopolize'' for ''monoplize'' after ''conspiracy to''.

Subsec. (*l*)(7). Pub. L. 103–325, §602(a)(8), substituted ''the ratio of'' for ''the ratio of the value of''.

Subsec. (m)(5)(A). Pub. L. 103–325, §602(a)(9), substituted ''such institution'' for ''savings association institution''.

Subsec. (m)(7). Pub. L. 103–325, §602(a)(10), inserted ''the'' before ''Federal''.

1993—Subsec. (b)(3)(C). Pub. L. 103–204, §8(h), substituted ''and such amendment may extend the date specified in subparagraph (B) to such later date as the Corporation determines will, over time, maximize the amount of semiannual assessments received by the Savings Association Insurance Fund, net of insurance losses incurred by the Fund.'' for '', but such amendments may not extend the date specified in subparagraph (B)''.

Subsec. (i)(3), (4). Pub. L. 103–204, §38(a), added par. (3) and redesignated former par. (3) as (4).

1992—Subsec. (a). Pub. L. 102–558, §303(b)(1), amended directory language of Pub. L. 102–242, §232(b)(1). See 1991 Amendment note below. Pub. L. 102–550, §1604(b)(1), which contained a similar amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (a)(5). Pub. L. 102–558, §303(b)(6)(A), amended directory language of Pub. L. 102–242, §302(e). See 1991 Amendment note below. Pub. L. 102–550, §1605(a)(5)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (a)(9), (10). Pub. L. 102–550, §1606(i)(1), redesignated par. (9), relating to designation of debtor or bankrupt corporation or transaction with such a corporation as highly leveraged, as (10).

Subsec. (b)(1)(A)(iii). Pub. L. 102–550, §1603(a)(1), substituted ''assessment rate.'' for ''assessment.''

Subsec. (b)(2). Pub. L. 102–558, §303(a), struck out comma after ''members'' in subpar. (D) and added subpar. (H). Pub. L. 102–550, §1605(a)(2), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(2)(A)(iii)(I). Pub. L. 102–550, §931(b), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''½ the assessment rate applicable with respect to such deposits pursuant to paragraph (10) during that semiannual assessment period; and''.

Subsec. (b)(6). Pub. L. 102–558, §303(b)(7), added par. (6). Pub. L. 102–550, §1603(a)(3), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(6)(D). Pub. L. 102–550, §1605(b)(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''any liability of the insured depository institution which is not treated as an insured deposit pursuant to section 1821(a)(8) of this title.''

Subsec. (b)(7). Pub. L. 102–558, §303(b)(8), added par. (7). Pub. L. 102–550, §1605(a)(6), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(10). Pub. L. 102–550, §931(a), substituted ''at an assessment rate to be determined by the Corporation by regulation. Such assessment rate may not be less than ½ the maximum assessment rate.'' for ''at the assessment rate of ½ the maximum rate.''

Subsec. (c)(4). Pub. L. 102–550, §1605(b)(2), added par. (4) and substituted ''paragraph (1)'' for ''paragraph (1) or (2)'' wherever appearing.

Subsec. (d). Pub. L. 102–558, §303(b)(6)(A), amended directory language of Pub. L. 102–242, §302(e). See 1991 Amendment note below. Pub. L. 102–550, §1605(a)(5)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (d)(5). Pub. L. 102–558, §303(b)(3), made technical amendment to reference to section 1834b of this title, to correct underlying provisions of original act. Pub. L. 102–550, §1604(b)(3), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

1991—Subsec. (a). Pub. L. 102–242, §474, added par. (9) relating to designation of debtor or bankrupt corporation or transaction with such a corporation as highly leveraged.

Pub. L. 102–242, §232(b)(1), as amended by Pub. L. 102–558, §303(b)(1), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Pub. L. 102–242, §141(c), amended par. (8) generally, substituting provisions relating to data collections for provisions which required that the reports of conditions made by depository institutions be provided to auditors which had made independent audits of insured depository institutions within the past two years and that such reports also include specified additional information. Par. (8) subsequently redesignated (9), see above.

Subsec. (a)(5). Pub. L. 102–242, §302(e)(3), as renumbered by Pub. L. 102–558, §303(b)(6)(A), struck out ''and for the computation of assessments provided in subsection (b) of this section'' after ''For this purpose''.

Subsec. (b). Pub. L. 102–242, §302(a), amended subsec. (b) generally, revising and restating as pars. (1) to (5) provisions of former pars. (1) to (11).

Subsec. (b)(1)(A)(iii). Pub. L. 102–242, § 104(b), added cl. (iii) and struck out former cl. (iii) which read as follows: ''DEADLINE FOR ANNOUNCING RATE CHANGES.—The Corporation shall announce any change in assessment rates.—

''(I) for the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

''(II) for the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.''

Subsec. (b)(1)(C). Pub. L. 102–242, § 104(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—

''(i) IN GENERAL.—The assessment rate for Bank Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

''(I) to maintain the reserve ratio at the designated reserve ratio; or

''(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

''(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Bank Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

''(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.''

Subsec. (b)(2)(A)(i)(II). Pub. L. 102–242, § 232(b)(3)(A), added subcl. (II) and struck out former subcl. (II) which read as follows: ''such Bank Insurance Fund member's average assessment base for the immediately preceding semiannual period; and''.

Subsec. (b)(2)(A)(ii)(II). Pub. L. 102–242, § 232(b)(3)(B), added subcl. (II) and struck out former subcl. (II) which read as follows: ''such Savings Association Insurance Fund member's average assessment base for the immediately preceding semiannual period.''

Subsec. (b)(2)(A)(iii). Pub. L. 102–242, § 232(b)(3)(C), added cl. (iii).

Subsec. (b)(6)(D). Pub. L. 102–242, § 311(a)(2), added subpar. (D).

Subsec. (b)(7) to (9). Pub. L. 102–242, § 103(b), added par. (7) and redesignated former pars. (7) and (8) as (8) and (9), respectively. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 102–242, § 232(b)(2), added par. (10) and redesignated former par. (10) as (11).

Pub. L. 102–242, § 113(c)(1), inserted ''or section 1820(e) of this title'' after ''under this section''.

Pub. L. 102–242, § 103(b)(1), redesignated par. (9) as (10).

Subsec. (b)(11). Pub. L. 102–242, § 232(b)(2), redesignated par. (10) as (11).

Subsec. (c). Pub. L. 102–242, § 302(b), amended subsec. (c) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) to (5).

Subsec. (c)(5). Pub. L. 102–242, § 313(a), added par. (5).

Subsec. (d). Pub. L. 102–242, § 302(e)(4), as renumbered by Pub. L. 102–558, § 303(b)(6)(A), amended subsec. (d) generally, substituting provisions exempting Corporation from apportionment for purposes of chapter 15 of title 31 for provisions relating to assessment credits.

Subsec. (d)(1)(A). Pub. L. 102–242, § 233(c)(2)(A), inserted ''(other than credits allowed pursuant to paragraph (4))'' after ''amount to be credited''.

Subsec. (d)(1)(B). Pub. L. 102–242, § 233(c)(2)(B), inserted ''(taking into account any assessment credit allowed pursuant to paragraph (4))'' after ''should be reduced''.

Subsec. (d)(4) to (7). Pub. L. 102–242, § 233(c)(1), added pars. (4) and (5) and redesignated former pars. (4) and (5) as (6) and (7), respectively.

Subsec. (i). Pub. L. 102–242, § 311(b)(3), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''Except with respect to trust funds which are owned by a depositor referred to in paragraph (2) of section 1821(a) of this title, trust funds held by an insured depository institution in a fiduciary capacity whether held in its trust department or held or deposited in any other department of the fiduciary depository institution shall be insured in an amount not to exceed $100,000 for each trust estate, and when deposited by the fiduciary depository institution in another insured depository institution such trust fund shall be similarly insured to the fiduciary depository institution according to the trust estates represented. Notwithstanding any other provision of this chapter, such insurance shall be separate from and additional to that covering other deposits of the owners of such trust funds or the beneficiaries of such trust estates. The Board of Directors shall have power by regulation to prescribe the manner of reporting and of depositing such trust funds.''

Subsec. (j)(9). Pub. L. 102–242, § 205, amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''Whenever any insured depository institution makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured depository institution, the president or other chief executive officer of the lending bank shall promptly report such fact to the appropriate Federal banking agency of the bank whose stock secures the loan or loans upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more or where the stock is that of the newly organized bank prior to its opening.''

1990—Subsec. (b)(1)(A). Pub. L. 101–508, § 2003(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

''(A) ANNUAL ASSESSMENT RATES PRESCRIBED.—

''(i) The Corporation shall set assessment rates for insured depository institutions annually.

''(ii) The Corporation shall fix the annual assessment rate of Bank Insurance Fund members independently from the annual assessment rate for Savings Association Insurance Fund members.

''(iii) The Corporation shall, by September 30 of each year, announce the assessment rates for the succeeding calendar year.''

Subsec. (b)(1)(B)(i)(II), (ii)(II). Pub. L. 101–508, § 2004(1), struck out '', not exceeding 1.50 percent,'' after ''insured deposits''.

Subsec. (b)(1)(B)(iii). Pub. L. 101–508, § 2004(2), inserted ''and'' after ''Fund;'' in subcl. (I), redesignated subcl. (IV) as (II) and struck out former subcls. (II) and (III) which read as follows:

''(II) allocate each calendar quarter to an Earnings Participation Account in the Bank Insurance Fund the investment income earned by the Bank Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

''(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Bank Insurance Fund members; and''.

Subsec. (b)(1)(B)(iv). Pub. L. 101–508, § 2004(3), inserted ''and'' after ''Fund;'' in subcl. (I), redesignated subcl. (IV) as (II), and struck out former subcls. (II) and (III) which read as follows:

''(II) allocate each calendar quarter to an Earnings Participation Account in the Savings Association Insurance Fund the investment income earned by the Savings Association Insurance Fund on such Supplemental Reserves in the preceding calendar quarter;

''(III) distribute such Earnings Participation Account at the conclusion of each calendar year to Savings Association Insurance Fund members; and''.

Subsec. (b)(1)(C). Pub. L. 101–508, § 2002(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—The annual assessment rate for Bank Insurance Fund members shall be—

''(i) until December 31, 1989, 1/12 of 1 percent;

''(ii) from January 1, 1990, through December 31, 1990, 0.12 percent;

''(iii) on and after January 1, 1991, 0.15 percent;

''(iv) on January 1 of a calendar year in which the reserve ratio of the Bank Insurance Fund is expected to be less than the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected operating expenses, case resolution expenditures, and investment income of the Bank Insurance Fund, and the impact on insured bank earnings and capitalization, except that—

''(I) from August 9, 1989, until the earlier of January 1, 1995, or January 1 of the calendar year in which the Bank Insurance Fund reserve ratio is expected to first attain the designated reserve ratio, the rate shall be as specified in clauses (i), (ii), and (iii) of this subparagraph so long as the Bank Insurance Fund reserve ratio is increasing on a calendar year basis;

''(II) the rate shall not exceed 0.325 percent; and

''(III) the increase in the rate in any 1 year shall not exceed 0.075 percent; and

''(v) sufficient to ensure that for each member in each year the assessment shall not be less than $1,000.''

Subsec. (b)(1)(D). Pub. L. 101–508, §2002(b), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS.—The annual assessment rate for Savings Association Insurance Fund members shall be—

''(i) until December 31, 1990, 0.208 percent;

''(ii) from January 1, 1991, through December 31, 1993, 0.23 percent;

''(iii) from January 1, 1994, through December 31, 1997, 0.18 percent;

''(iv) on and after January 1, 1998, 0.15 percent;

''(v) on January 1 of a calendar year in which the reserve ratio of the Savings Association Insurance Fund is expected to be less than the designated reserve ratio by determination of the Board of Directors, such rate determined by the Board of Directors to be appropriate to restore the reserve ratio to the designated reserve ratio within a reasonable period of time, after taking into consideration the expected expenses and income of the Savings Association Insurance Fund, and the effect on insured savings association earnings and capitalization, except that—

''(I) from August 9, 1989, through December 31, 1994, the rate shall be as specified in clauses (i), (ii), and (iii) above;

''(II) the rate shall not exceed 0.325 percent; and

''(III) the increase in the rate in any one year shall not exceed 0.075 percent; and

''(vi) sufficient to ensure that for each member in each year the assessment shall not be less than $1,000.''

Subsec. (b)(2)(A). Pub. L. 101–508, §2002(c)(1), inserted ''or subparagraph (C)(iii) or (D)(iii) of subsection (b)(1) of this section'' after ''subsection (c)(2) of this section'' in introductory provisions.

Subsec. (b)(2)(A)(i). Pub. L. 101–508, §2002(c)(2), inserted ''the greater of $500 or an amount'' before ''equal to the product of'' in introductory provisions.

Subsec. (b)(2)(A)(i)(I). Pub. L. 101–508, §2003(b)(1), (2), struck out ''annual'' before ''assessment'' and inserted ''during that semiannual period'' after ''member''.

Subsec. (b)(2)(A)(ii). Pub. L. 101–508, §2002(c)(2), inserted ''the greater of $500 or an amount'' before ''equal to the product of'' in introductory provisions.

Subsec. (b)(2)(A)(ii)(I). Pub. L. 101–508, §2003(b)(1), (3), struck out ''annual'' before ''assessment'' and inserted ''during that semiannual period'' after ''member''.

Subsec. (d)(1)(A). Pub. L. 101–508, §2003(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''By September 30 of each calendar year, the Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions in the succeeding calendar year.''

1989—Pub. L. 101–73, §201, substituted references to insured depository institutions for references to insured banks wherever appearing in this section and references to Director of the Office of Thrift Supervision for references to Federal Home Loan Bank Board wherever appearing in this section.

Subsec. (a)(1). Pub. L. 101–73, §911(c), substituted provisions for different and increasing levels of penalties, and provisions regarding assessment and collection of penalties and agency hearings, for provision at end that every such bank which failed to make or publish any such report within 10 days would be subject to a penalty of not more than $100 for each day of such failure recoverable by the Corporation for its use.

Subsec. (a)(2)(A). Pub. L. 101–73, §208(1)(A)–(C), (E), inserted references to Director of Office of Thrift Supervision, Federal Housing Finance Board, and any Federal home loan bank in two places, substituted ''any of them'' for ''either of them'', and substituted ''depository institution, and may furnish'' for ''State nonmember bank (except a District bank), and may furnish''.

Pub. L. 101–73, §208(1)(D), which directed the amendment of last sentence of subpar. (A) by inserting ''or savings associations'' after ''banks'' could not be executed, because ''banks'' does not appear in text.

Subsec. (a)(2)(B). Pub. L. 101–73, §208(1)(F), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The Corporation shall have access to reports of examination made by, and reports of condition made to, the Federal Home Loan Bank Board or any Federal Home Loan Bank, respecting any insured Federal savings bank, and the Corporation shall have access to all revisions of reports of condition made to either such agency. Such agency shall promptly advise the Corporation of any revisions or changes in respect to deposit liabilities made or required to be made in any report of condition.''

Subsec. (a)(3). Pub. L. 101–73, §208(2)(A), substituted ''Each insured depository institution shall make to the appropriate Federal banking agency 4 reports'' for ''Each insured State nonmember bank (except a District bank) and each foreign bank having an insured branch (other than a Federal branch) shall make to the Corporation, each insured national bank, each foreign bank having an insured branch which is a Federal branch, and each insured District bank shall make to the Comptroller of the Currency, each insured State member bank shall make to the Federal Reserve bank of which it is a member, and each insured Federal savings bank shall make to the Federal Home Loan Bank Board, four reports''.

Pub. L. 101–73, §208(2)(B)–(D), substituted ''depository institution, the preceding'' for ''bank, the preceding'', ''depository institution to make such'' for ''bank to make such'', ''depository institution other than the officer'' for ''bank other than the officer'', ''insured depository institution shall furnish to the Corporation'' for ''insured national, District and State member bank shall furnish to the Corporation'', and ''banks or savings associations under its jurisdiction'' for ''banks under its jurisdiction''.

Subsec. (a)(4). Pub. L. 101–73, §208(3), which directed the substitution of references to depository institutions for references to banks, except where ''foreign bank'' appeared, was executed as directed, except that the exception was made for ''foreign banks'' rather than ''foreign bank'', as the probable intent of Congress.

Subsec. (a)(8). Pub. L. 101–73, §931(a), added par. (8).

Subsec. (b)(1). Pub. L. 101–73, §208(4), added par. (1) and struck out former par. (1) which read as follows: ''The annual assessment rate shall be one-twelfth of 1 per centum. Except as provided in subsection (c)(2) of this section, the semiannual assessment due from any insured bank for any semiannual period shall be equal to one-half the annual assessment rate multiplied by such bank's average assessment base for the immediately preceding semiannual period.''

Subsec. (b)(2). Pub. L. 101–73, § 208(4), added par. (2) and struck out former par. (2) which read as follows: ''For the purposes of this section the term 'semiannual period' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.''

Subsec. (b)(3) to (8). Pub. L. 101–73, § 208(6), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (c)(1) to (3). Pub. L. 101–73, § 208(7), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (d). Pub. L. 101–73, § 208(5), amended subpar. (d) generally, substituting provisions relating to computation, applicability, definitions, etc., respecting assessment credits, for provisions relating to transfer of net assessment income of Corporation to capital account, pro rata credit to insured banks, and adjustment of transferred income.

Subsecs. (e) to (g), (i). Pub. L. 101–73, § 208(7), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (j)(1). Pub. L. 101–73, § 208(8), struck out at end ''For purposes of this subsection, the term 'insured bank' shall include any 'bank holding company', as that term is defined in section 1841 of this title, which has control of any such insured bank, and the appropriate Federal banking agency in the case of bank holding companies shall be the Board of Governors of the Federal Reserve System.''

Subsec. (j)(2)(A). Pub. L. 101–73, § 208(9), substituted ''depository institution'' for ''bank'' wherever appearing, and substituted ''default'' for ''failure''.

Subsec. (j)(2)(D). Pub. L. 101–73, § 208(10), inserted ''unless such agency determines that an emergency exists,'' after ''banking agency shall,''.

Subsec. (j)(7)(F). Pub. L. 101–73, § 208(11), added subpar. (F).

Subsec. (j)(15). Pub. L. 101–73, § 905(c), inserted at end ''The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection 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 depository institution (whether such date occurs before, on, or after the date of the enactment of this sentence).''

Subsec. (j)(16). Pub. L. 101–73, § 907(d), amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''Any person who willfully violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The appropriate Federal banking agency shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.''

Subsec. (j)(17). Pub. L. 101–73, § 208(12), amended par. (17) generally. Prior to amendment, par. (17) read as follows: ''This subsection shall not apply to a transaction subject to section 1842 or section 1828 of this title. This subsection shall not apply to an insured Federal savings bank.''

Subsec. (j)(18). Pub. L. 101–73, § 208(13), added par. (18).

Subsec. (*l*). Pub. L. 101–73, § 208(14), added subsec. (*l*).

Subsecs. (m), (n). Pub. L. 101–73, § 208(15), added subsecs. (m) and (n).

1987—Subsec. (b)(9). Pub. L. 100–86 added par. (9).

1986—Subsec. (j)(1). Pub. L. 99–570, § 1360(a), substituted ''or, in the discretion of the agency, extending for an additional 30 days'' for ''or extending for up to another thirty days'' in first sentence, notwithstanding directory language that new wording be substituted for ''or extending up to another thirty days'', and amended second sentence generally. Prior to amendment, second sentence read as follows: ''The period for disapproval may be further extended only if the agency determines that any acquiring party has not furnished all the information required under paragraph (6) of this subsection or that in its judgment any material information submitted is substantially inaccurate''.

Subsec. (j)(2). Pub. L. 99–570, § 1360(b), (c), designated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (j)(15) to (16). Pub. L. 99–570, § 1360(d), added par. (15) and redesignated former pars. (15) and (16) as (16) and (17), respectively.

1982—Subsec. (a)(2). Pub. L. 97–320, § 113(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(3). Pub. L. 97–320, § 113(e), inserted the reporting requirement for each insured Federal savings bank, added the Chairman of the Federal Home Loan Bank Board to the group designated to decide upon which dates the reports will be made, and struck out alternative provision that such decision would be made by a majority of such group.

Subsec. (a)(6). Pub. L. 97–320, § 113(f), inserted '', the Federal Home Loan Bank Board,'' after ''Comptroller of the Currency''.

Subsec. (d)(1)(4). Pub. L. 97–320, § 117, added cl. (4).

Subsec. (j)(16). Pub. L. 97–320, § 113(q), inserted provision that this subsection shall not apply to an insured Federal savings bank.

Subsec. (k). Pub. L. 97–320, § 429, substituted requirement that Federal banking agencies issue rules and regulations for reports and public disclosure by banks of extensions of credits to its executive officers or principal shareholders or the relative interests of such persons for prior provisions: covering annual reports of insured banks to Federal banking agencies containing information respecting preceding calendar year listing names of stockholders of record owning, controlling, or having more than a 10 per centum voting control of any class of voting securities of the bank and also listing names of executive officers and controlling stockholders and aggregate amount of extensions of credit to such persons, any company controlled by such persons, and any political or campaign committee the funds or services of which will benefit such persons, or which is controlled by such persons; defining an executive officer as one meant under section 375a of this title; authorizing Federal banking agencies to issue rules and regulations to require filed information to be included in any required reports to be made available to the public upon request; and requiring copies of any reports to be made publicly available upon request.

1981—Subsec. (a)(4). Pub. L. 97–110, § 103(b)(1), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsec. (b)(5)(B). Pub. L. 97–110, § 103(b)(2), inserted ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

1980—Subsec. (d). Pub. L. 96–221, § 308(d), designated existing provisions as par. (1), substituted ''1980'' for ''1961'' and ''40'' for ''33⅓'', and added par. (2).

Subsec. (i). Pub. L. 96–221, § 308(a)(1)(B), substituted ''$100,000'' for ''$40,000''.

1978—Subsec. (a)(1). Pub. L. 95–369, § 6(c)(8), inserted ''and each foreign bank having an insured branch which is not a Federal branch'' after ''(except a District bank)''.

Subsec. (a)(3). Pub. L. 95–630, § 302, substituted ''the signatures of at least two directors or trustees of the reporting bank other than the officer making such dec-

laration'' for ''the signatures of at least three of the directors or trustees of the reporting bank other than the officer making such declaration, or by at least two if there are not more than three directors or trustees''.

Pub. L. 95–369, §6(c)(9), inserted ''and each foreign bank having an insured branch (other than a Federal branch)'' after ''(except a District Bank)'' and ''each foreign bank having an insured branch which is a Federal branch'' after ''each insured national bank''.

Subsec. (a)(4). Pub. L. 95–630, §310(a), inserted provision that deposits which are accumulated for payment of personal loans and are assigned or pledged to assure payment of loans at maturity not be included in total deposits in such reports, but shall be deducted from loans for which such deposits are assigned or pledged to assure repayment.

Subsec. (a)(5). Pub. L. 95–630, §310(b), struck out ''deposits accumulated for the payment of personal loans,'' after ''deposit-open account,''.

Subsec. (a)(7). Pub. L. 95–369, §6(c)(10), added par. (7).

Subsec. (b)(4). Pub. L. 95–369, §6(c)(11), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B) of this paragraph, a bank's assessment base'' for ''A bank's assessment base'', and added subpar. (B).

Subsec. (b)(6). Pub. L. 95–630, §310(c), redesignated subpars. (C) and (D) as (B) and (C) and struck out former subpar. (B) which related to deposits included in reported deposit liabilities which are accumulated for the payment of personal loans and are assigned or pledged to assure repayment of the loans at maturity.

Subsec. (j). Pub. L. 95–630, §602, amended subsec. (j) generally, substituting provisions relating to the requirement that no person shall acquire control of any insured bank unless the appropriate Federal agency is notified 60 days prior to such transfer and authorizing the appropriate Federal agency to approve or disapprove such transfer for provisions relating to the requirement that notification of a transfer of control of an insured bank be given to the appropriate Federal agency after such transfer.

Subsec. (j)(1). Pub. L. 95–369, §6(c)(12), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B) of this paragraph, whenever'' for ''Whenever'', and added subpar. (B).

Subsec. (j)(2). Pub. L. 95–369, §6(c)(13), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B) of this paragraph, whenever'' for ''Whenever'', and added subpars. (B) and (C).

Subsec. (k). Pub. L. 95–630, §901, added subsec. (k).

1974—Subsec. (i). Pub. L. 93–495 inserted exception relating to trust funds owned by a depositor referred to par. (2) of section 1821(a) of this title, and substituted ''$40,000'' for ''$20,000''.

1970—Pub. L. 91–609 inserted reference to American Samoa in subsecs. (a)(4) and (b)(5)(B), respectively.

1969—Subsec. (i). Pub. L. 91–151 substituted $20,000 for $15,000 in first sentence.

1966—Subsec. (i). Pub. L. 89–695, §301(b), substituted ''$15,000'' for ''$10,000'' in first sentence.

Subsec. (j)(6). Pub. L. 89–695, §201, repealed par. (6) definition of ''appropriate Federal banking agency'', now incorporated in section 1813(q) of this title.

1964—Subsec. (j). Pub. L. 88–593 added subsec. (j).

1960—Subsec. (a). Pub. L. 86–671, §2, amended subsec. (a) generally, and among other changes, provided for reports of condition, the form, contents, date of making, number, and publication of the reports of condition, declaration and attestation of officers, penalties, access to reports, computation of deposit liabilities, segregation and classification of deposits and definitions. Former provisions of the subsection relating to rate and amount of assessment, assessment base and deductions therefrom, form and contents of certified statements, and payment of assessments, are either covered or superseded by provisions incorporated in subsecs. (b)(1), (3), (4), (6) including the last paragraph, and (c)(3) of this section.

Subsec. (b). Pub. L. 86–671, §2, amended subsec. (b) generally, and among other changes, provided for the computation of assessments, the rate and amount, the base, additions and deductions, records and definition. Former provisions of the subsection relating to filing of certified statements of assessment base and amounts due and payment thereof are incorporated in subsec. (c)(1) of this section.

Subsec. (c). Pub. L. 86–671, §2, inserted provisions of pars. (1) and (3), incorporated in par. (2) the provisions of former subsec. (c) relating to exemption from payment of assessment for semiannual period in which bank became an insured bank and amount of first semiannual assessment due, omitted therefrom the provision for inclusion in the assessment base of the assumed liabilities for deposits of other banks, and required the filing of certified statement of the assessment base or the making of a special report of condition.

Subsec. (d). Pub. L. 86–671, §3, substituted ''December 31, 1961'' and ''33⅓'' for ''December 31, 1960'' and ''40'', respectively.

Subsec. (f). Pub. L. 86–671, §3, substituted ''fails to make any report of condition under subsection (a) of this section or to file'' for ''fails to file'' and inserted ''make such report or'' before ''file such statement''.

Subsec. (g). Pub. L. 86–671, §3, substituted ''made any such report of condition under subsection (a) of this section or filed'' for ''filed'' and ''to make any such report or file'' for ''to file'' in first sentence.

Subsec. (h). Pub. L. 86–671, §3, inserted ''to make any report of condition under subsection (a) of this section or'' before ''to file''.

Subsec. (i). Pub. L. 86–671, §3, substituted ''in its trust department or held or deposited in any other department of the fiduciary bank'' for ''in its trust or deposited in any other department or in another bank'' in first sentence and deleted proviso respecting deposit liability of insured bank in which trust funds are deposited rather than deposit liability of depositing fiduciary bank from second sentence.

EFFECTIVE DATE OF *2000* AMENDMENT

Pub. L. 106–569, title XII, §1231(b), Dec. 27, 2000, 114 Stat. 3037, provided that: ''The amendments made by subsection (a) [amending this section] shall be deemed to have the same effective date as section 2707 of the Deposit Insurance Funds Act of 1996 (Public Law 104–208; 110 Stat. 3009–496).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2703(b) of Pub. L. 104–208 applicable with respect to semiannual periods which begin after Dec. 31, 1996, see section 2703(c)(1) of Pub. L. 104–208, set out as an Effective and Termination Dates of 1996 Amendment note under section 1441 of this title.

Amendment by section 2704(d)(6)(B), (14)(G) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 8(h) of Pub. L. 103–204 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(a) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Section 38(a) of Pub. L. 103–204 provided that the amendment made by that section is effective Dec. 19, 1993.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 303(b)(7) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(a) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Section 303(b)(8) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(e)(4)

of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Amendment by section 303(a), (b)(1), (3), (6)(A) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Sections 1603(a)(3) and 1605(a)(6) of Pub. L. 102–550, which provided effective date provisions for the amendments made by those sections, were repealed, effective Oct. 28, 1992, by section 305 of Pub. L. 102–558, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Section 1605(b)(2) of Pub. L. 102–550 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(b) of Pub. L. 102–242. See Effective Date of 1991 Amendment note below.

Amendment by sections 1603(a)(1), 1604(b)(1), (3), 1605(a)(2), (5)(A), (b)(1), 1606(i)(1) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 302(g) of Pub. L. 102–242 provided that: ''The amendments made by this section [amending this section and sections 1815, 1818, and 1820 of this title] shall become effective on the earlier of—

''(1) 180 days after the date on which final regulations promulgated in accordance with subsection (c) [set out below] become effective [Final regulations became effective Oct. 1, 1993. See 58 F.R. 34357.]; or

''(2) January 1, 1994.''

Amendment by section 311(a)(2), (b)(3) of Pub. L. 102–242 effective at end of 2-year period beginning Dec. 19, 1991, but not applicable to any time deposit which was made before Dec. 19, 1991, and matures after end of 2-year period beginning on Dec. 19, 1991, with rollovers and renewals treated as new deposits, see section 311(c)(1), (2) of Pub. L. 102–242, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(d) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

Amendment by section 911(c) of Pub. L. 101–73 applicable with respect to reports filed or required to be filed after Aug. 9, 1989, see section 911(i) of Pub. L. 101–73, set out as a note under section 161 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1364(f) of Pub. L. 99–570 provided that: ''The amendments made by sections 1360 and 1361 [amending this section and section 1730 of this title] shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act [Oct. 27, 1986].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 430 of Pub. L. 97–320 provided that: ''The provision of law amended by section 428(b) [amending section 1972 of this title] and section 429 [amending this section] shall remain in effect until the regulations referred to in such amendments become effective.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 308(e) of Pub. L. 96–221 provided that: ''The amendments made by this section [amending this section and sections 1724, 1728, 1787, 1813, and 1821 of this title] shall take effect on the date of enactment of this Act [Mar. 31, 1980].''

Amendment by section 308(a)(1)(B) of Pub. L. 96–221 not applicable to any claim arising out of the closing of a bank prior to the effective date of section 308 of Pub. L. 96–221, Mar. 31, 1980, see section 308(a)(2) of Pub. L. 96–221, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by section 101(a)(2) of Pub. L. 93–495, see section 101(g) of Pub. L. 93–495, set out as a note under section 1813 of this title.

For effective date of amendment by section 102(a)(2) of Pub. L. 93–495, see section 102(b), (c) of Pub. L. 93–495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

For effective date of amendment by Pub. L. 91–151, see section 7(b) of Pub. L. 91–151, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by section 301(b) of Pub. L. 89–695, see section 301(e) of Pub. L. 89–695, set out as a note under section 1813 of this title.

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending this section and sections 1464, 1730, 1813, 1818 to 1820 of this title, repealing section 77 of this title, and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 7 of Pub. L. 86–671 provided that: ''The amendments made by this Act [amending this section and sections 161, 1813, 1820 and repealing section 162 of this title] shall take effect on January 1, 1961, except that the certified statements covering the semiannual period ending December 31, 1960, and the determination and payment of assessments (for the semiannual period ending June 30, 1961) required to be certified in such statements, shall be made as if such amendments were not in effect.''

SHORT TITLE OF 1978 AMENDMENT

For short title of title VI of Pub. L. 95–630 as the ''Change in Bank Control Act of 1978'', see section 601 of Pub. L. 95–630, set out as a note under section 1811 of this title.

REGULATIONS

Section 302(c) of Pub. L. 102–242 provided that: ''To implement the risk-based assessment system required under section 7(b) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)] (as amended by subsection (a)), the Federal Deposit Insurance Corporation shall—

''(1) provide notice of proposed regulations in the Federal Register, not later than December 31, 1992, with an opportunity for comment on the proposal of not less than 120 days; and

''(2) promulgate final regulations not later than July 1, 1993.''

Section 302(f) of Pub. L. 102–242 provided that: ''To carry out the amendments made by this section [amending this section and sections 1815, 1818, and 1820 of this title], the Corporation may promulgate regulations governing the transition from the assessment system in effect on the date of enactment of this Act [Dec. 19, 1991] to the assessment system required under the amendments made by this section.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SPECIAL ASSESSMENT TO CAPITALIZE SAIF

Section 2702 of Pub. L. 104–208 provided that:

''(a) IN GENERAL.—Except as provided in subsection (f), the Board of Directors of the Federal Deposit Insurance Corporation shall impose a special assessment on the SAIF-assessable deposits of each insured depository institution in accordance with assessment regulations of the Corporation at a rate applicable to all such institutions that the Board of Directors, in its sole discretion, determines (after taking into account the adjustments described in subsections (g), (h), and (j)) will cause the Savings Association Insurance Fund to achieve the designated reserve ratio on the first business day of the 1st month beginning after the date of the enactment of this Act [Sept. 30, 1996].

''(b) FACTORS TO BE CONSIDERED.—In carrying out subsection (a), the Board of Directors shall base its determination on—

''(1) the monthly Savings Association Insurance Fund balance most recently calculated;

''(2) data on insured deposits reported in the most recent reports of condition filed not later than 70 days before the date of enactment of this Act [Sept. 30, 1996] by insured depository institutions; and

''(3) any other factors that the Board of Directors deems appropriate.

''(c) DATE OF DETERMINATION.—For purposes of subsection (a), the amount of the SAIF-assessable deposits of an insured depository institution shall be determined as of March 31, 1995.

''(d) DATE PAYMENT DUE.—Except as provided in subsection (g), the special assessment imposed under this section shall be—

''(1) due on the first business day of the 1st month beginning after the date of the enactment of this Act [Sept. 30, 1996]; and

''(2) paid to the Corporation on the later of—

''(A) the first business day of the 1st month beginning after such date of enactment; or

''(B) such other date as the Corporation shall prescribe, but not later than 60 days after the date of enactment of this Act.

''(e) ASSESSMENT DEPOSITED IN SAIF.—Notwithstanding any other provision of law, the proceeds of the special assessment imposed under this section shall be deposited in the Savings Association Insurance Fund.

''(f) EXEMPTIONS FOR CERTAIN INSTITUTIONS.—

''(1) EXEMPTION FOR WEAK INSTITUTIONS.—The Board of Directors may, by order, in its sole discretion, exempt any insured depository institution that the Board of Directors determines to be weak, from paying the special assessment imposed under this section if the Board of Directors determines that the exemption would reduce risk to the Savings Association Insurance Fund.

''(2) GUIDELINES REQUIRED.—Not later than 30 days after the date of enactment of this Act [Sept. 30, 1996], the Board of Directors shall prescribe guidelines setting forth the criteria that the Board of Directors will use in exempting institutions under paragraph (1). Such guidelines shall be published in the Federal Register.

''(3) EXEMPTION FOR CERTAIN NEWLY CHARTERED AND OTHER DEFINED INSTITUTIONS.—

''(A) IN GENERAL.—In addition to the institutions exempted from paying the special assessment under paragraph (1), the Board of Directors shall exempt any insured depository institution from payment of the special assessment if the institution—

''(i) was in existence on October 1, 1995, and held no SAIF-assessable deposits before January 1, 1993;

''(ii) is a Federal savings bank which—

''(I) was established de novo in April 1994 in order to acquire the deposits of a savings association which was in default or in danger of default; and

''(II) received minority interim capital assistance from the Resolution Trust Corporation under section 21A(w) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(w)] in connection with the acquisition of any such savings association; or

''(iii) is a savings association, the deposits of which are insured by the Savings Association Insurance Fund, which—

''(I) before January 1, 1987, was chartered as a Federal savings bank insured by the Federal Savings and Loan Insurance Corporation for the purpose of acquiring all or substantially all of the assets and assuming all or substantially all of the deposit liabilities of a national bank in a transaction consummated after July 1, 1986; and

''(II) as of the date of that transaction, had assets of less than $150,000,000.

''(B) DEFINITION.—For purposes of this paragraph, an institution shall be deemed to have held SAIF-assessable deposits before January 1, 1993, if—

''(i) it directly held SAIF-assessable deposits before that date; or

''(ii) it succeeded to, acquired, purchased, or otherwise holds any SAIF-assessable deposits as of the date of enactment of this Act [Sept. 30, 1996] that were SAIF-assessable deposits before January 1, 1993.

''(4) EXEMPT INSTITUTIONS REQUIRED TO PAY ASSESSMENTS AT FORMER RATES.—

''(A) PAYMENTS TO SAIF AND DIF.—Any insured depository institution that the Board of Directors exempts under this subsection from paying the special assessment imposed under this section shall pay semiannual assessments—

''(i) during calendar years 1996, 1997, and 1998, into the Savings Association Insurance Fund, based on SAIF-assessable deposits of that institution, at assessment rates calculated under the schedule in effect for Savings Association Insurance Fund members on June 30, 1995; and

''(ii) during calendar year 1999—

''(I) into the Deposit Insurance Fund, based on SAIF-assessable deposits of that institution as of December 31, 1998, at assessment rates calculated under the schedule in effect for Savings Association Insurance Fund members on June 30, 1995; or

''(II) in accordance with clause (i), if the Bank Insurance Fund and the Savings Association Insurance Fund are not merged into the Deposit Insurance Fund.

''(B) OPTIONAL PRO RATA PAYMENT OF SPECIAL ASSESSMENT.—This paragraph shall not apply with respect to any insured depository institution (or successor insured depository institution) that has paid, during any calendar year from 1997 through 1999, upon such terms as the Corporation may announce, an amount equal to the product of—

''(i) 16.7 percent of the special assessment that the institution would have been required to pay

under subsection (a), if the Board of Directors had not exempted the institution; and

''(ii) the number of full semiannual periods remaining between the date of the payment and December 31, 1999.

''(g) SPECIAL ELECTION FOR CERTAIN INSTITUTIONS FACING HARDSHIP AS A RESULT OF THE SPECIAL ASSESSMENT.—

''(1) ELECTION AUTHORIZED.—If—

''(A) an insured depository institution, or any depository institution holding company which, directly or indirectly, controls such institution, is subject to terms or covenants in any debt obligation or preferred stock outstanding on September 13, 1995; and

''(B) the payment of the special assessment under subsection (a) would pose a significant risk of causing such depository institution or holding company to default or violate any such term or covenant,

the depository institution may elect, with the approval of the Corporation, to pay such special assessment in accordance with paragraphs (2) and (3) in lieu of paying such assessment in the manner required under subsection (a).

''(2) 1ST ASSESSMENT.—An insured depository institution which makes an election under paragraph (1) shall pay an assessment in an amount equal to 50 percent of the amount of the special assessment that would otherwise apply under subsection (a), by the date on which such special assessment is payable under subsection (d).

''(3) 2D ASSESSMENT.—An insured depository institution which makes an election under paragraph (1) shall pay a 2d assessment, by the date established by the Board of Directors in accordance with paragraph (4), in an amount equal to the product of 51 percent of the rate determined by the Board of Directors under subsection (a) for determining the amount of the special assessment and the SAIF-assessable deposits of the institution on March 31, 1996, or such other date in calendar year 1996 as the Board of Directors determines to be appropriate.

''(4) DUE DATE OF 2D ASSESSMENT.—The date established by the Board of Directors for the payment of the assessment under paragraph (3) by a depository institution shall be the earliest practicable date which the Board of Directors determines to be appropriate, which is at least 15 days after the date used by the Board of Directors under paragraph (3).

''(5) SUPPLEMENTAL SPECIAL ASSESSMENT.—An insured depository institution which makes an election under paragraph (1) shall pay a supplemental special assessment, at the same time the payment under paragraph (3) is made, in an amount equal to the product of—

''(A) 50 percent of the rate determined by the Board of Directors under subsection (a) for determining the amount of the special assessment; and

''(B) 95 percent of the amount by which the SAIF-assessable deposits used by the Board of Directors for determining the amount of the 1st assessment under paragraph (2) exceeds, if any, the SAIF-assessable deposits used by the Board for determining the amount of the 2d assessment under paragraph (3).

''(h) ADJUSTMENT OF SPECIAL ASSESSMENT FOR CERTAIN BANK INSURANCE FUND MEMBER BANKS.—

''(1) IN GENERAL.—For purposes of computing the special assessment imposed under this section with respect to a Bank Insurance Fund member bank, the amount of any deposits of any insured depository institution which section 5(d)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)] treats as insured by the Savings Association Insurance Fund shall be reduced by 20 percent—

''(A) if the adjusted attributable deposit amount of the Bank Insurance Fund member bank is less than 50 percent of the total domestic deposits of that member bank as of June 30, 1995; or

''(B) if, as of June 30, 1995, the Bank Insurance Fund member—

''(i) had an adjusted attributable deposit amount equal to less than 75 percent of the total assessable deposits of that member bank;

''(ii) had total assessable deposits greater than $5,000,000,000; and

''(iii) was owned or controlled by a bank holding company that owned or controlled insured depository institutions having an aggregate amount of deposits insured or treated as insured by the Bank Insurance Fund greater than the aggregate amount of deposits insured or treated as insured by the Savings Association Insurance Fund.

''(2) ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT.—For purposes of this subsection, the 'adjusted attributable deposit amount' shall be determined in accordance with section 5(d)(3)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)(C)].

''(i) ADJUSTMENT TO THE ADJUSTED ATTRIBUTABLE DEPOSIT AMOUNT FOR CERTAIN BANK INSURANCE FUND MEMBER BANKS.—[Amended section 1815(d)(3) of this title.]

''(j) ADJUSTMENT OF SPECIAL ASSESSMENT FOR CERTAIN SAVINGS ASSOCIATIONS.—

''(1) SPECIAL ASSESSMENT REDUCTION.—For purposes of computing the special assessment imposed under this section, in the case of any converted association, the amount of any deposits of such association which were insured by the Savings Association Insurance Fund as of March 31, 1995, shall be reduced by 20 percent.

''(2) CONVERTED ASSOCIATION.—For purposes of this subsection, the term 'converted association' means—

''(A) any Federal savings association—

''(i) that is a member of the Savings Association Insurance Fund and that has deposits subject to assessment by that fund which did not exceed $4,000,000,000, as of March 31, 1995; and

''(ii) that had been, or is a successor by merger, acquisition, or otherwise to an institution that had been, a State savings bank, the deposits of which were insured by the Federal Deposit Insurance Corporation before August 9, 1989, that converted to a Federal savings association pursuant to section 5(i) of the Home Owners' Loan Act [12 U.S.C. 1464(i)] before January 1, 1985;

''(B) a State depository institution that is a member of the Savings Association Insurance Fund that had been a State savings bank before October 15, 1982, and was a Federal savings association on August 9, 1989;

''(C) an insured bank that—

''(i) was established de novo in order to acquire the deposits of a savings association in default or in danger of default;

''(ii) did not open for business before acquiring the deposits of such savings association; and

''(iii) was a Savings Association Insurance Fund member before the date of enactment of this Act [Sept. 30, 1996]; and

''(D) an insured bank that—

''(i) resulted from a savings association before December 19, 1991, in accordance with section 5(d)(2)(G) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(2)(G)]; and

''(ii) had an increase in its capital in conjunction with the conversion in an amount equal to more than 75 percent of the capital of the institution on the day before the date of the conversion.''

SMALL BUSINESS AND SMALL FARM LOAN INFORMATION

Section 122 of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, §1603(c), Oct. 28, 1992, 106 Stat. 4079, provided that:

''(a) IN GENERAL.—Before the end of the 180-day period beginning on the date of the enactment of this Act [Dec. 19, 1991], the appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to annually submit information on small businesses and small farm lending in their reports of condition.

''(b) CREDIT AVAILABILITY.—The regulations prescribed under subsection (a) shall require insured depository institutions to submit such information as the agency may need to assess the availability of credit to small businesses and small farms.

''(c) CONTENTS.—The information required under subsection (a) may include information regarding the following:

''(1) The total number and aggregate dollar amount of commercial loans and commercial mortgage loans to small businesses.

''(2) Charge-offs, interest, and interest fee income on commercial loans and commercial mortgage loans to small businesses.

''(3) Agricultural loans to small farms.''

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in section 201 of Pub. L. 89–695, which amended this section, to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 375a, 461, 1441, 1441b, 1790a, 1813, 1815, 1818, 1821, 1821a, 1824, 1831i, 1834, 1834a, 1841 of this title; title 7 section 6f; title 15 sections 78*o*–5, 78q.

§ 1818. Termination of status as insured depository institution

(a) Termination of insurance

(1) Voluntary termination

Any insured depository institution which is not—

(A) a national member bank;

(B) a State member bank;

(C) a Federal branch;

(D) a Federal savings association; or

(E) an insured branch which is required to be insured under subsection (a) or (b)[1] of section 3104 of this title,

may terminate such depository institution's status as an insured depository institution if such insured institution provides written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

(2) Involuntary termination

(A) Notice to primary regulator

If the Board of Directors determines that—

(i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

(ii) an insured depository institution is in an unsafe or unsound condition to continue operations as an insured institution; or

(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation,

the Board of Directors shall notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the State banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based for the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than 30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agreement of such agency.

(B) Notice of intention to terminate insurance

If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution, the Board shall—

(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured depository institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board) with respect to the termination of the institution's insured status.

(3) Hearing; termination

If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5 and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) of this section has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

(4) Appearance; consent to termination

Unless the depository institution shall appear at the hearing by a duly authorized rep-

[1] See References in Text note below.

resentative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

(5) Judicial review

Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

(6) Publication of notice of termination

The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

(7) Temporary insurance of deposits insured as of termination

After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

(8) Temporary suspension of insurance

(A) In general

If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

(B) Special rule for certain savings institutions

(i) Certain goodwill included in tangible capital

In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 1464(t) of this title. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a ''special supervisory association''.

(ii) Suspension order

The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 1464(t) of this title.

Nothing in this paragraph limits the right of the Corporation or the Director of the Office of Thrift Supervision to enforce a contractual provision which authorizes the Corporation or the Director of the Office of Thrift Supervision, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this chapter or under applicable accounting standards.

(C) Effective period of temporary order

Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized

hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

(D) Judicial review

Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

(E) Continuation of insurance for prior deposits

The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this chapter.

(F) Publication of order

The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

(G) Notice by Corporation

If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

(H) Lack of notice

Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

(i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

(9) Final decisions to terminate insurance

Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q) of this section);

shall be made by the Board of Directors and may not be delegated.

(10) Low- to moderate-income housing lender

In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

(b) Cease-and-desist proceedings

(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the depository institution or any written agreement entered into with the agency, the agency may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection and subsections (c) through (s) and subsection (u) of this section shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding

company, as those terms are defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], and to any organization organized and operated under section 25(a)[2] of the Federal Reserve Act [12 U.S.C. 611 et seq.] or operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.], in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank).

(4) This subsection and subsections (c) through (s) and subsection (u) of this section shall apply to any foreign bank or company to which subsection (a) of section 3106 of this title applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under paragraph (3) of this subsection. For the purposes of this paragraph, the term ''subsidiary'' shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C. 1841].

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Federal banking agency is the Comptroller of the Currency, to any national banking association chartered by the Comptroller of the Currency, including an uninsured association.

(6) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (c) of this section which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) restrict the growth of the institution;

(C) dispose of any loan or asset involved;

(D) rescind agreements or contracts; and

(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

(F) take such other action as the banking agency determines to be appropriate.

(7) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (c) of this section includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY AS UNSAFE OR UNSOUND PRACTICE.—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

(9) EXPANSION OF AUTHORITY TO SAVINGS AND LOAN AFFILIATES AND ENTITIES.—Subsections (a) through (s) of this section and subsection (u) of this section shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company,,[3] whether wholly or partly owned, in the same manner as such subsections apply to a savings association.

(10) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) of this section to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(c) Temporary cease-and-desist orders

(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the depository institution or any institution-affiliated party pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (b)(6) of this section. Such order shall become effective upon service upon the depository institution or such institution-affiliated party and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued

[2] See References in Text note below.

[3] So in original.

against the depository institution or such party, until the effective date of such order.

(2) Within ten days after the depository institution concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the depository institution or such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the depository institution or such party under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) of this section specifies, on the basis of particular facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1) of this section.

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b)(1) of this section in connection with the notice of charges; or

(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.

(d) Temporary cease-and-desist orders; enforcement

In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of this section, the appropriate Federal banking agency may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(e) Removal and prohibition authority

(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) violated—

(I) any law or regulation;

(II) any cease-and-desist order which has become final;

(III) any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

(IV) any written agreement between such depository institution and such agency;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution,

the agency may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31 and such violation was not inadvertent or unintentional;

(ii) an officer or director of an insured depository institution has knowledge that an institution-affiliated party of the insured depository institution has violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii) of this section; or

(iii) an officer or director of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.],

the agency may serve upon such party, officer, or director a written notice of the agency's intention to remove such party from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency—

(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

(ii) serves such party with written notice of the suspension order.

(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f) of this section, shall remain in effect and enforceable until—

(I) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

(C) COPY OF ORDER.—If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall serve a copy of such order on any insured depository institution with which such party is associated at the time such order is issued.

(4) A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. In any action brought under this section by the Comptroller of the Currency in respect to any such party with respect to a national banking association or a District depository institution, the findings and conclusions of the Administrative Law Judge shall be certified to the Board of Governors of the Federal Reserve System for the determination of whether any order shall issue. Any such order shall become effective at the expiration of thirty days after service upon such depository institution and such party concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5) For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term ''officer'' within the term ''institution-affiliated party'' as used in this subsection means an employee or officer with management functions, and the term ''director'' within the term ''institution-affiliated party'' as used in this subsection includes an advisory or honorary director, a trustee of a depository institution under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(7) INDUSTRYWIDE PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g) of this section, has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4) of this section, or as a savings association under subsection (b)(9) of this section;

(iii) any insured credit union under the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(iv) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];

(v) any appropriate Federal depository institution regulatory agency;

(vi) the Federal Housing Finance Board and any Federal home loan bank; and

(vii) the Resolution Trust Corporation.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of—

(i) the agency that issued such order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Corporation and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) ''APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY'' DEFINED.—For purposes of this paragraph and subsection (j) of this section, the term ''appropriate Federal financial institutions regulatory agency'' means—

(i) the appropriate Federal banking agency, in the case of an insured depository institution;

(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.];

(iii) the National Credit Union Administration Board, in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]);

(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Board and any Federal home loan bank; and

(v) the Thrift Depositor Protection Oversight Board, in the case of the Resolution Trust Corporation.

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the appropriate Federal banking agency specifically finds that it should apply to a corporation, firm, or other business enterprise.

(f) Stay of suspension and/or prohibition of institution-affiliated party

Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured depository institution under subsection (e)(3) of this section, such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(g) Suspension or removal of institution-affiliated party charged with felony

(1) SUSPENSION OR PROHIBITION.—

(A) IN GENERAL.—Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18 or section 5322 or 5324 of title 31,

the appropriate Federal banking agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon the depository institution.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the agency.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the appropriate Federal banking agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution,

issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution without the prior written consent of the appropriate agency.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution without the prior written consent of the appropriate agency.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon the depository institution, whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such depository institution.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the agency from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to the interests of the bank's[4] depositors or threaten to impair public confidence in the depository institution. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the depository institution will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to such party. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h) Hearings and judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution 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. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thir-

[4] So in original. Probably should be ''depository institution's''.

ty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5. 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.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(i) Jurisdiction and enforcement; penalty

(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section or under section 1831*o* or 1831p–1 of this title, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section or under section 1831*o* or 1831p–1 of this title no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any insured depository institution which, and any institution-affiliated party who—

(i) violates any law or regulation;

(ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) of this section or any final order under section 1831*o* or 1831p–1 of this title;

(iii) violates any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

(iv) violates any written agreement between such depository institution and such agency,

shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such depository institution; or

(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution-affiliated party who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured depository institution, an amount to not exceed $1,000,000; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of—

(I) $1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under sub-

paragraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

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

(K) REGULATIONS.—Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of a institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency 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 depository institution (whether such date occurs before, on, or after August 9, 1989).

(4) PREJUDGMENT ATTACHMENT.—

(A) IN GENERAL.—In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 1821(d)(18) of this title) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) STANDARD.—

(i) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State.

(j) Criminal penalty

Whoever, being subject to an order in effect under subsection (e) or (g) of this section, without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6) of this section) in the conduct of the affairs of—

(1) any insured depository institution;

(2) any institution treated as an insured bank under subsection (b)(3) or (b)(4) of this section, or as a savings association under subsection (b)(9) of this section;

(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]);

(4) any institution chartered under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.]; or

(5) the Resolution Trust Corporation,

shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.

(k) Repealed. Pub. L. 101–73, title IX, § 920(c), Aug. 9, 1989, 103 Stat. 488

(*l*) Notice of service

Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any State depository institution or any institution-affiliated party, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

(m) Notice to State authorities

In connection with any proceeding under subsection (b), (c)(1), or (e) of this section involving an insured State bank or any institution-affiliated party, the appropriate Federal banking agency shall provide the appropriate State supervisory authority with notice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State

supervisory authority, the agency may proceed as provided in this section. No bank or other party who is the subject of any notice or order issued by the agency under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(n) Ancillary provisions; subpena power, etc.

In the course of or in connection with any proceeding under this section, or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title, the agency conducting the proceeding, examination, or investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section 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 subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured depository institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the depository institution or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(*o*) Termination of membership of State bank in Federal Reserve System

Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of subchapter VIII of chapter 3 of this title, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as provided in subsection (c) or (d) of section 1814 of this title, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Director of the Office of Thrift Supervision shall appoint a receiver for the bank, which shall be the Corporation.

(p) Banks not receiving deposits

Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the depository institution that its insured status will terminate at the expiration of the first full semiannual assessment period following such notice. A finding by the Board of Directors that a depository institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the notice to be given by the depository institution of such termination and the Corporation may publish notice thereof. Upon the termination of the insured status of any such depository institution, its deposits shall thereupon cease to be insured and the depository institution shall thereafter be relieved of all future obligations to the Corporation, including the obligation to pay future assessments.

(q) Assumption of liabilities

Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the semiannual period in which the assumption takes effect.

(r) Action or proceeding against foreign bank; basis; removal of officer or other person; venue; service of process

(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent thereof may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which, in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank has branches or agencies in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any State, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any State, service shall be made on at least one branch or agency so involved.

(s) Compliance with monetary transaction recordkeeping and report requirements

(1) Compliance procedures required

Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter II of chapter 53 of title 31.

(2) Examinations of depository institution to include review of compliance procedures

(A) In general

Each examination of an insured depository institution by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) Exam report requirement

The report of examination shall describe any problem with the procedures maintained by the insured depository institution.

(3) Order to comply with requirements

If the appropriate Federal banking agency determines that an insured depository institution—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) of this section requiring such depository institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(t) Authority of FDIC to take enforcement action against insured depository institutions and institution-affiliated parties

(1) Recommending action by appropriate Federal banking agency

The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 1817(j) of this title, this section, or section 1828(j) of this title with respect to any insured depository institution or any institution-affiliated party. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) FDIC's authority to act if appropriate Federal banking agency fails to follow recommendation

If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

(A) the insured depository institution is in an unsafe or unsound condition;

(B) the institution or institution-affiliated party is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution or institution-affiliated party from continuing such practices; or

(C) the conduct or threatened conduct (including any acts or omissions) poses a risk to the deposit insurance fund, or may prejudice the interests of the institution's depositors.

(3) Effect of exigent circumstances

(A) Authority to act

The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

(B) Agreement on exigent circumstances

The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

(4) Corporation's powers; institution's duties

For purposes of this subsection—

(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

(B) the institution and its affiliates shall have the same duties and obligations with respect to the Corporation as the institution and its affiliates have with respect to the appropriate Federal banking agency.

(5) Requests for formal actions and investigations

(A) Submission of requests

A regional office of an appropriate Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution or institution-affiliated party shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

(B) Agencies required to report on requests

Each appropriate Federal banking agency shall report semiannually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.

(u) Public disclosures of final orders and agreements

(1) In general

The appropriate Federal banking agency shall publish and make available to the public on a monthly basis—

(A) any written agreement or other written statement for which a violation may be enforced by the appropriate Federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) Hearings

All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) Transcript of hearing

A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (i) of this section. A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5.

(4) Delay of publication under exceptional circumstances

If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(5) Documents filed under seal in public enforcement hearings

The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(6) Retention of documents

Each Federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(7) Disclosures to Congress

No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(v) Foreign investigations

(1) Requesting assistance from foreign banking authorities

In conducting any investigation, examination, or enforcement action under this chap-

ter, the appropriate Federal banking agency may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) Providing assistance to foreign banking authorities

(A) In general

Any appropriate Federal banking agency may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to banking matters or currency transactions administered or enforced by the requesting authority.

(B) Investigation by Federal banking agency

Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

(C) Factors to consider

In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) Treatment of foreign banking authority

For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) Rule of construction

Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(w) Termination of insurance for money laundering or cash transaction reporting offenses

(1) In general

(A) Conviction of title 18 offenses

(i) Duty to notify

If an insured State depository institution has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) Notice of termination; pretermination hearing

After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a) of this section.

(B) Conviction of title 31 offenses

If an insured State depository institution is convicted of any criminal offense under section 5322 or 5324 of title 31 after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

(C) Notice to State supervisor

The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

(2) Factors to be considered

In determining whether to terminate insurance under paragraph (1), the Board of Directors shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the depository institution knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the depository institution which were designed to prevent the occurrence of any such offense.

(C) The extent to which the depository institution has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty.

(D) The extent to which the depository institution has implemented additional internal controls (since the commission of the offense of which the depository institution was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) Notice to State banking supervisor and public

When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described

in paragraph (1) and the Office of Thrift Supervision, where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

(4) Temporary insurance of previously insured deposits

Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with subsection (a)(7) of this section.

(5) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

(6) "Senior executive officer" defined

The term ''senior executive officer'' has the same meaning as in regulations prescribed under section 1831i(f) of this title.

(Sept. 21, 1950, ch. 967, §2[8], 64 Stat. 879; Pub. L. 89–695, title II, §§202, 204, Oct. 16, 1966, 80 Stat. 1046, 1054; Pub. L. 93–495, title I, §110, Oct. 28, 1974, 88 Stat. 1506; Pub. L. 95–369, §§6(c)(14), (15), 11, Sept. 17, 1978, 92 Stat. 618, 624; Pub. L. 95–630, title I, §§107(a)(1), (b), (c)(1), (d)(1), (e)(1), 111(a), title II, §208(a), title III, §§303, 304, Nov. 10, 1978, 92 Stat. 3649, 3653, 3654, 3656, 3660, 3665, 3674, 3676; Pub. L. 97–320, title I, §113(g), (h), title IV, §§404(c), 424(c), (d)(6), (e), 425(b), (c), 427(d), 433(a), Oct. 15, 1982, 96 Stat. 1473, 1474, 1512, 1523–1527; Pub. L. 99–570, title I, §1359(a), Oct. 27, 1986, 100 Stat. 3207–27; Pub. L. 101–73, title II, §201, title IX, §§901(b)(1), (d), 902(a), 903(a), 904(a), 905(a), 906(a), 907(a), 908(a), 912, 913(a), 920(a), (c), 926, Aug. 9, 1989, 103 Stat. 187, 446, 450, 453, 457, 459, 462, 477, 482, 483, 488; Pub. L. 101–647, title XXV, §§2521(b)(1), 2532(a), 2547(a)(1), (2), 2596(a), (b), Nov. 29, 1990, 104 Stat. 4864, 4880, 4886, 4887, 4908; Pub. L. 102–233, title III, §302(a), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102–242, title I, §131(c)(1), (2), title III, §§302(e)(5), formerly (e)(4), 307, Dec. 19, 1991, 105 Stat. 2266, 2349, 2360; Pub. L. 102–550, title XV, §§1503(a), 1504(a), title XVI, §§1603(d)(2)–(4), 1605(a)(5)(A), (11), Oct. 28, 1992, 106 Stat. 4048, 4051, 4080, 4085, 4086; Pub. L. 102–558, title III, §§303(b)(6)(A), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103–204, §25, Dec. 17, 1993, 107 Stat. 2408; Pub. L. 103–325, title IV, §411(c)(2)(A), title VI, §602(a)(11)–(18), Sept. 23, 1994, 108 Stat. 2253, 2289; Pub. L. 105–164, §3(a)(2), Mar. 20, 1998, 112 Stat. 35; Pub. L. 105–362, title X, §1001(d), Nov. 10, 1998, 112 Stat. 3291; Pub. L. 106–569, title XII, §1232, Dec. 27, 2000, 114 Stat. 3037.)

REFERENCES IN TEXT

Subsections (a) and (b) of section 3104 of this title, referred to in subsec. (a)(1)(E), were redesignated subsections (b) and (c), respectively, of section 3104 of this title by Pub. L. 103–328, title I, §107(a)(1), Sept. 29, 1994, 108 Stat. 2358.

The Bank Holding Company Act of 1956, referred to in subsec. (b)(3), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(3), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that Act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

The Federal Rules of Civil Procedure, referred to in subsecs. (b)(10) and (i)(4)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Depository Institution Management Interlocks Act, referred to in subsec. (e)(2)(A)(iii), is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, as amended, which is classified principally to chapter 33 (§3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Federal Credit Union Act, referred to in subsec. (e)(7)(A)(iii), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsecs. (e)(7)(A)(iv), (D)(ii) and (j)(4), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, as amended, which is classified generally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Subchapter VIII of chapter 3 of this title, referred to in subsec. (*o*), was in the original ''section 9 of the Federal Reserve Act'', meaning section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§321 et seq.) of chapter 3 of this title.

PRIOR PROVISIONS

Section is derived from subsec. (i) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2000—Subsec. (*o*). Pub. L. 106–569 substituted ''subsection (c) or (d) of section 1814'' for ''subsection (d) of section 1814''.

1998—Subsec. (b)(9). Pub. L. 105–164, §3(a)(2)(A), struck out ''to any service corporation of a savings association and to any subsidiary of such service corporation'' after ''of a savings and loan holding company,''.

Subsec. (e)(7)(A)(ii). Pub. L. 105–164, §3(a)(2)(B), substituted ''(b)(9)'' for ''(b)(8)''.

Subsec. (j)(2). Pub. L. 105–164, §3(a)(2)(C), substituted ''(b)(9)'' for ''(b)(8)''.

Subsec. (u)(3) to (8). Pub. L. 105–362 redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out heading and text of former par. (3). Text read as follows: ''A written report shall be made part of a determination not to hold a public hearing pursuant to paragraph (2) or not to publish a document pursuant to paragraph (1)(A). At the end of each calendar quarter, all such reports shall be transmitted to the Congress.''

1994—Subsec. (a)(3). Pub. L. 103–325, §602(a)(11), substituted ''paragraph (2)(B)'' for ''subparagraph (B) of this subsection''.

Subsec. (a)(7). Pub. L. 103–325, §602(a)(12), inserted comma after ''Board of Directors'' in first sentence and substituted ''the period'' for ''the period the period'' in third sentence.

Subsec. (b)(4). Pub. L. 103–325, §602(a)(13), substituted ''paragraph (3)'' for ''subparagraph (3)''.

Subsec. (c)(2). Pub. L. 103–325, § 602(a)(14), substituted ''injunction'' for ''injuction''.

Subsec. (g)(1)(A)(ii). Pub. L. 103–325, § 411(c)(2)(A), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

Subsec. (g)(2). Pub. L. 103–325, § 602(a)(15), substituted ''bank'' for ''depository institution'' wherever appearing.

Subsec. (*o*). Pub. L. 103–325, § 602(a)(16), in second sentence, substituted ''subsection (d)'' for ''subsection (b)'' and ''Board of Directors'' for ''board of directors'' in two places.

Subsec. (p). Pub. L. 103–325, § 602(a)(17), substituted ''depository'' for ''banking'' wherever appearing.

Subsec. (r)(2). Pub. L. 103–325, § 602(a)(18), substituted ''agent thereof'' for ''agent therof''.

Subsec. (w)(1)(B). Pub. L. 103–325, § 411(c)(2)(A), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

1993—Subsec. (b)(10). Pub. L. 103–204, § 25(2), added par. (10).

Subsec. (i)(4)(B). Pub. L. 103–204, § 25(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''A permanent or temporary injunction or restraining order shall be granted without bond upon a prima facie showing that money damages, restitution, or civil money penalties, as sought by such agency, is appropriate.''

1992—Subsec. (a)(3). Pub. L. 102–550, § 1503(a)(2), inserted ''of this subsection or subsection (w) of this section'' after ''subparagraph (B)''.

Subsec. (e)(2). Pub. L. 102–550, § 1504(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act, the agency may serve upon such director or officer a written notice of its intention to remove him from office.''

Subsec. (g)(1). Pub. L. 102–550, § 1504(a)(2), amended par. (1) generally, subdividing existing provisions into subpars. (A) to (D) and, in subpar. (A), including violations under section 1956, 1957, or 1960 of title 18, or section 5322 of title 31, as cause for suspension of any institution-affiliated party.

Subsec. (i)(1). Pub. L. 102–550, § 1603(d)(3), inserted reference to section 1831p–1 of this title in two places, and substituted ''order under any such section, or to review'' for ''order under this section, or to review''.

Pub. L. 102–550, § 1603(d)(2), amended directory language of Pub. L. 102–242, § 131(c)(2)(A). See 1991 Amendment note below.

Subsec. (i)(2)(A)(ii). Pub. L. 102–550, § 1603(d)(4), substituted ''subsection (b), (c), (e), (g), or (s) of this section or any final order under section 1831*o* or 1831p–1 of this title'' for ''subsection (b), (c), (e), (g), or (s) of this section, or final order under section 1831*o* of this title''.

Subsec. (q). Pub. L. 102–558, § 303(b)(6)(A), amended directory language of Pub. L. 102–242, § 302(e). See 1991 amendment note below. Pub. L. 102–550, § 1605(a)(5)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out in a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (t)(2)(B). Pub. L. 102–550, § 1605(a)(11)(A), inserted ''or institution-affiliated party'' after ''institution'' in two places.

Subsec. (t)(2)(C). Pub. L. 102–550, § 1605(a)(11)(B), substituted ''the conduct or threatened conduct'' for ''the institution's conduct or threatened conduct''.

Subsec. (t)(5)(A). Pub. L. 102–550, § 1605(a)(11)(C), inserted ''or institution-affiliated party'' after ''depository institution''.

Subsec. (w). Pub. L. 102–550, § 1503(a)(1), added subsec. (w).

1991—Subsec. (b)(8), (9). Pub. L. 102–242, § 131(c)(1), added par. (8) and redesignated former par. (8) as (9).

Subsec. (i)(1). Pub. L. 102–242, § 131(c)(2)(A), as amended by Pub. L. 102–550, § 1603(d)(2), inserted ''or under section 1831*o* of this title'' after first and second references to ''section''.

Subsec. (i)(2)(A)(ii). Pub. L. 102–242, § 131(c)(2)(B), inserted '', or final order under section 1831*o* of this title'' after ''section''.

Subsec. (q). Pub. L. 102–242, § 302(e)(5), as renumbered by Pub. L. 102–558, § 303(b)(6)(A), substituted ''assessment with respect to the deposits'' for ''assessment upon the deposits''.

Subsec. (t). Pub. L. 102–242, § 307, amended subsec. (t) generally, substituting present provisions for provisions relating to authority of Board to take enforcement action against savings associations.

1990—Subsec. (b)(4). Pub. L. 101–647, § 2596(a)(2), substituted ''subsections (c) through (s) and subsection (u) of this section'' for ''subsections (c), (d), (h), (i), (k), (*l*), (m), and (n) of this section''.

Subsec. (b)(6). Pub. L. 101–647, § 2596(a)(1), inserted ''or remedy'' after ''to correct''.

Subsec. (c)(1). Pub. L. 101–647, § 2596(b), inserted ''or remedy'' after ''to prevent'' and substituted ''(b)(6)'' for ''(b)(6)(B)''.

Subsec. (h)(1). Pub. L. 101–647, § 2547(a)(2), struck out after first sentence ''Such hearing shall be private, unless the appropriate Federal banking agency, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.''

Subsec. (i)(4). Pub. L. 101–647, § 2521(b)(1), added par. (4).

Subsec. (u). Pub. L. 101–647, § 2547(a)(1), amended subsec. (u) generally. Prior to amendment, subsec. (u) read as follows:

''(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public—

''(A) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other provision of law; and

''(B) any modification to or termination of any final order described in subparagraph (A) of this paragraph.

''(2) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of any final order pursuant to paragraph (1) would seriously threaten the safety or soundness of an insured depository institution, such agency may delay the publication of such order for a reasonable time.''

Subsec. (v). Pub. L. 101–647, § 2532(a), added subsec. (v).

1989—Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

Subsec. (a). Pub. L. 101–73, § 926(1), inserted heading.

Subsec. (a)(1) to (3). Pub. L. 101–73, § 926(1), added pars. (1) to (3) and struck out first four sentences which read as follows: ''Any insured bank (except a national member bank, a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title, or State member bank) may, upon not less than ninety days' written notice to the Corporation, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an insured bank, or violated an applicable law, rule, regulation or order, or any condition imposed in writing by the Corporation in connection with the granting of any application or other request by the bank, or any written agreement entered into with the Corporation the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a district bank, to the Federal Home Loan Bank Board in the case of an insured Federal savings bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member

bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days, or such shorter period not less than twenty days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the Federal Home Loan Bank Board in the case of an insured Federal savings bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention.''

Subsec. (a)(4). Pub. L. 101–73, § 926(2), designated fifth sentence as par. (4) and inserted heading.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (a)(5). Pub. L. 101–73, § 926(3), designated sixth sentence as par. (5), inserted heading, and substituted ''Any insured depository institution whose insured status'' for ''Any insured bank whose insured status''.

Subsec. (a)(6). Pub. L. 101–73, § 926(4), designated seventh sentence as par. (6) and inserted heading.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (a)(7). Pub. L. 101–73, § 926(5), (6), designated last three sentences as par. (7), inserted heading, substituted ''of at least 6 months or up to 2 years, within the discretion of the Board of Directors'' for first reference to ''of two years'', and ''the period referred to in the 1st sentence'' for second reference to ''of two years'', and struck out ''of two years'' after ''within such period''.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Subsec. (a)(8) to (10). Pub. L. 101–73, § 926(7), added pars. (8) to (10).

Subsec. (b)(1). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, § 901(b)(1)(A)(i), (B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents, or other persons participating in the conduct of banks.

Pub. L. 101–73, § 901(b)(1)(A)(ii), which directed that ''institution-affiliated parties'' be substituted for ''directors, officers, employees, agents, or other persons participating in the conduct of the affairs of such bank'', was executed by making the substitution for ''directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such bank'', as the probable intent of Congress.

Subsec. (b)(2). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (b)(3). Pub. L. 101–73, § 902(a)(1)(A), substituted ''subsections (c) through (s) and subsection (u)'' for ''subsections (c) through (f) and (h) through (n)''.

Subsec. (b)(4). Pub. L. 101–73, § 902(a)(1)(B), which directed the substitution of ''subsections (c) through (s) and subsection (u)'' for ''subsections (c) through (f) and (h) through (n)'', could not be executed because the words ''subsections (c) through (f) and (h) through (n)'' did not appear. See 1990 Amendment note above.

Subsec. (b)(6) to (8). Pub. L. 101–73, § 902(a)(1)(C), added pars. (6) to (8).

Subsec. (c)(1). Pub. L. 101–73, § 902(a)(2)(A), substituted ''insolvency or significant dissipation'' for ''insolvency or substantial dissipation'', struck out ''seriously'' before ''weaken the condition of'' and before ''prejudice the interests of'', and inserted after first sentence ''Such order may include any requirement authorized under subsection (b)(6)(B) of this section''.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, § 901(b)(1)(B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents or other persons participating in the conduct of the affairs of banks.

Subsec. (c)(2). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, § 901(b)(1)(B), substituted references to institution-affiliated parties for references to directors, officers, employees, agents or other persons participating in the conduct of the affairs of banks.

Subsec. (c)(3). Pub. L. 101–73, § 902(a)(2)(B), added par. (3).

Subsec. (d). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (e)(1). Pub. L. 101–73, § 903(a)(1), amended par. (1) generally, by, among other changes, giving existing provisions subpar. designations, and by adding as conditions for removal of a party a violation of any condition imposed by writing in connection with a grant of any application or request, and violation of any written agreement between such depository institution and agency.

Subsec. (e)(2). Pub. L. 101–73, § 903(a)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced either his personal dishonesty or a willful or continuing disregard for its safety and soundness, and, in addition, has evidenced his unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the bank.''

Subsec. (e)(3). Pub. L. 101–73, § 903(a)(2), added par. (3). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 101–73, § 903(a)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In respect to any director or officer of an insured bank or any other person referred to in paragraph (1), (2), or (3) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1), (2), or (3) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal or prohibition is issued against the director or

officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.''

Pub. L. 101–73, § 901(b)(1)(C), substituted references to institution-affiliated parties for references to directors, officers, or other persons.

Pub. L. 101–73, § 901(d), substituted reference to depository institutions for reference to banks.

Subsec. (e)(5). Pub. L. 101–73, § 903(a)(2), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 101–73, § 901(b)(1)(D), inserted ''within the term 'institution-affiliated party' '' after ''the term 'officer' '', and inserted ''within the term 'institution-affiliated party' as used in this subsection'' after ''the term 'director' ''.

Pub. L. 101–73, § 901(d), substituted reference to depository institution for reference to bank.

Subsec. (e)(6). Pub. L. 101–73, § 903(a)(2), (3), added par. (6) and redesignated former par. (6) as (5).

Subsec. (e)(7). Pub. L. 101–73, § 904(a), added par. (7).

Subsec. (f). Pub. L. 101–73, § 903(a)(4)(A), substituted ''(e)(3)'' for ''(e)(4)'' and ''(e)(1) or (e)(2)'' for ''(e)(1), (e)(2), or (e)(3)''.

Pub. L. 101–73, § 901(b)(1)(E), substituted ''any institution-affiliated party'' and ''such party'' for ''any director, officer, or other person'' and ''such director, officer, or other person'', respectively, wherever appearing.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (g)(1). Pub. L. 101–73, § 906(a), struck out ''authorized by a United States attorney'' after ''information, indictment, or complaint'', and substituted ''or an agreement to enter a pre-trial diversion or other similar program'' for ''with respect to such crime''.

Pub. L. 101–73, § 903(a)(4)(B), substituted ''(1), (2), or (3)'' for ''(1), (2), (3), or (4)''.

Pub. L. 101–73, § 901(d), substituted references to depository institutions for references to banks wherever appearing.

Pub. L. 101–73, § 901(b)(1)(F)(i), substituted ''institution-affiliated party'' for ''director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank''.

Pub. L. 101–73, § 901(b)(1)(F)(v), which directed the substitution of ''party'' for ''director, officer or other person'', could not be executed, because the phrase did not appear.

Pub. L. 101–73, § 901(b)(1)(F)(ii)–(iv), (vi), substituted ''such party'' for ''the individual'' wherever appearing, ''such party'' for ''such director, officer, or other person'' wherever appearing, ''such party'' for ''him'' wherever appearing, and ''whereupon such party (if a director or an officer)'' for ''whereupon such director or officer''.

Subsec. (g)(2). Pub. L. 101–73, § 901(d), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (g)(3). Pub. L. 101–73, § 901(d), substituted references to depository institutions for references to banks wherever appearing.

Pub. L. 101–73, § 901(b)(1)(G), substituted ''the institution-affiliated party concerned'' for ''the director, officer, or other person concerned'' and substituted ''such party'' for ''such individual'', for ''the concerned director, officer, or other person'', and for any other reference to the director, officer or other person.

Subsec. (h)(1). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (h)(2). Pub. L. 101–73, § 920(a), substituted ''Any party to any proceeding under paragraph (1)'' for ''Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein,''.

Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing.

Pub. L. 101–73, § 901(b)(1)(H), substituted ''institution-affiliated party'' for ''director or officer or other person''.

Subsec. (i)(1). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (i)(2). Pub. L. 101–73, § 907(a), amended par. (2) generally, revising and restating as subpars. (A) to (K) provisions of former cls. (i) to (vii).

Subsec. (i)(3). Pub. L. 101–73, § 905(a), added par. (3).

Subsec. (j). Pub. L. 101–73, § 908(a), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''Any director or officer, or former director or officer of an insured bank, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (e)(4), (e)(5), or (g) of this section, and who (i) participates in any manner in the conduct of the affairs of the bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written approval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be fined not more than $5,000 or imprisoned for not more than one year, or both.''

Subsec. (k). Pub. L. 101–73, § 920(c), struck out subsec. (k) which defined the terms ''cease-and-desist order which has become final'', ''order which has become final'', and ''violation'', as those terms were used in this section.

Subsec. (*l*). Pub. L. 101–73, § 901(d), substituted ''State depository institution'' for ''State bank''.

Pub. L. 101–73, § 901(b)(1)(I), substituted ''institution-affiliated party'' for ''director or officer thereof or other person participating in the conduct of its affairs''.

Subsec. (m). Pub. L. 101–73, § 901(b)(1)(J), substituted ''institution-affiliated party'' for ''director or officer or other person participating in the conduct of its affairs''.

Subsec. (n). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank''.

Subsec. (*o*). Pub. L. 101–73, § 201(b), substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

Subsec. (q). Pub. L. 101–73, § 901(d), substituted ''depository institution'' for ''bank'' wherever appearing and ''depository institutions'' for ''banks''.

Subsec. (s). Pub. L. 101–73, § 901(d), substituted references to depository institutions for references to banks wherever appearing.

Subsec. (t). Pub. L. 101–73, § 912, added subsec. (t).

Subsec. (u). Pub. L. 101–73, § 913(a), added subsec. (u).

1986—Subsec. (i)(2)(i). Pub. L. 99–570, § 1359(a)(2), inserted reference to subsec. (s) of this section.

Subsec. (s). Pub. L. 99–570, § 1359(a)(1), added subsec. (s).

1982—Subsec. (a). Pub. L. 97–320, § 113(g), inserted ''to the Federal Home Loan Bank Board in the case of an insured Federal savings bank,'' after ''national bank or a district bank,'' and ''or the Federal Home Loan Bank Board in the case of an insured Federal savings bank,'' after ''Currency in the case of a national bank,''.

Subsec. (b)(3). Pub. L. 97–320, § 425(b), substituted ''25(a)'' for ''25A''.

Subsec. (b)(4). Pub. L. 97–320, § 425(c), which directed the amendment of subsec. (b) by adding a new par. (4) at end, was executed (as the probable intent of Congress) as a general amendment of existing par. (4), as added by Pub. L. 95–369, the two pars. (4) being identical except that the new par. (4) refers to ''purposes of this paragraph'' rather than ''purposes of this subparagraph''.

Subsec. (b)(5). Pub. L. 97–320, § 404(c), added par. (5).

Subsec. (e)(3). Pub. L. 97–320, § 427(d)(1)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 97–320, § 427(d)(1)(A), (B), redesignated former par. (3) as (4) and inserted references to par. (3) of this subsection in two places. Former par. (4) redesignated (5).

Subsec. (e)(5), (6). Pub. L. 97–320, §427(d)(1)(A), redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (f). Pub. L. 97–320, §427(d)(2), substituted references to ''subsection (e)(4)'' for ''subsection (e)(5) or (e)(7)'' and ''subsection (e)(1), (e)(2), or (e)(3)'' for ''subsection (e)(1), (e)(3), or (e)(7)''.

Subsec. (g)(1). Pub. L. 97–320, §427(d)(3), in penultimate sentence, included reference to par. (4) of subsec. (e) of this section.

Subsec. (i)(2)(i). Pub. L. 97–320, §424(c), (d)(6), inserted proviso giving agency discretionary authority to compromise, etc., any civil money penalty imposed under such authority, and substituted ''may be assessed'' for ''shall be assessed''.

Subsec. (i)(2)(iv). Pub. L. 97–424(e) substituted ''twenty days from the service'' for ''ten days from the date''.

Subsec. (j). Pub. L. 97–320, §427(d)(4), struck out reference to subsec. (e)(3) and included reference to subsec. (e)(5) of this section.

Subsec. (*o*). Pub. L. 97–320, §113(h), inserted provision that whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Federal Home Loan Bank Board shall appoint a receiver for the bank, which shall be the Corporation.

Subsec. (q). Pub. L. 97–320, §433(a), struck out item (3) provisions requiring the assuming or resulting bank to give notice of an assumption to each of the depositors of the bank whose liabilities are assumed within thirty days after such assumption takes effect.

1978—Subsec. (a). Pub. L. 95–369, §6(c)(14), inserted ''a foreign bank having an insured branch which is a Federal branch, a foreign bank having an insured branch which is required to be insured under section 3104(a) or (b) of this title'' after ''(except a national member bank''.

Subsec. (b)(1), (2). Pub. L. 95–630, §107(a)(1), extended coverage of par. (1) to include directors, officers, employees, agents, or other persons participating in the conduct of the affairs of an insured bank or a bank which has insured deposits, and reenacted par. (2) without change.

Subsec. (b)(3). Pub. L. 95–630, §107(b), substituted ''subsections (c) through (f) and (h) through (n) of this section'' for ''subsections (c), (d), (h), (i), (k), (*l*), (m), and (n) of this section'' and inserted provisions relating to any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act and provisions relating to the issuance of a notice of charges or cease-and-desist order against a bank holding company or subsidiary by any Federal banking agency other than the Board of Governors of the Federal Reserve System.

Subsec. (b)(4). Pub. L. 95–369, §11, added par. (4).

Subsec. (c). Pub. L. 95–630, §107(c)(1), in pars. (1) and (2) inserted references to any director, officer, employee, agent, or other person participating in the conduct of the affairs of the bank and in par. (1) inserted ''prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section'' after ''interests of its depositors'' and ''and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings'' after ''violation or practice''.

Subsec. (e). Pub. L. 95–630, §§107(d)(1), 208(a), generally revised and condensed the provisions relating to the suspension and removal of bank directors and officers, consolidated procedures relating to the certification of facts to the Board of Governors of the Federal Reserve System by the Comptroller of the Currency, substituted references to insured banks for references to insured State banks (other than a District Bank), and inserted provisions defining ''officer'' and ''director'' for the purpose of enforcing any law, rule, etc., in connection with an interlocking relationship.

Subsec. (g). Pub. L. 95–630, §111(a)(1), among other changes, inserted in par. (1) '', if continued service or participation by the individual may pose a threat to the interests of the bank's depositors or may threaten to impair public confidence in the bank'' after ''agency may'' in two places, inserted provision that any notice of suspension or order of removal issued under this paragraph remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) hereof unless terminated by the agency, and added par. (3).

Subsec. (h)(1). Pub. L. 95–630, §111(a)(2), inserted ''(other than the hearing provided for in subsection (g)(3) of this section)'' after ''provided for in this section''.

Subsec. (i). Pub. L. 95–630, §107(e)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95–630, §111(a)(3), substituted ''subsections (e)(3), (e)(4)'' for ''subsections (e)(5), (e)(7), (e)(8)''.

Subsec. (k). Pub. L. 95–630, §111(a)(4), substituted ''paragraph (1) or (3) of subsection (g)'' for ''paragraph (1) of subsection (g)''.

Subsec. (n). Pub. L. 95–630, §111(a)(5), inserted provision creating a criminal penalty for a willful failure or refusal to attend and testify or to answer any lawful inquiry or to produce books, papers, etc. in obedience to the subpoena of the appropriate Federal banking agency.

Pub. L. 95–630, §303, inserted ''or in connection with any claim for insured deposits or any examination or investigation under section 1820(c) of this title,'' after ''proceeding under this section,'', ''examination, or investigation or considering the claim for insured deposits,'' after ''conducting the proceeding,'', and ''such agency or any'' before ''party to proceedings'' and substituted ''any such proceedings, claims, examinations, or investigations'' for ''any such proceedings'' and ''subpenaed under this subsection'' for ''subpenaed under this section''.

Subsec. (q). Pub. L. 95–630, §304, among other changes, substituted provisions requiring the assuming or resulting bank to give notice of an assumption to each of the depositors of the bank whose liabilities are so assumed within thirty days after such assumption takes effect for provisions requiring the bank whose liabilities are being assumed to give notice of such assumption to its depositors within thirty days after such assumption takes effect, by publication or by any reasonable means, in accordance with regulations to be prescribed by the Board of Directors.

Subsec. (r). Pub. L. 95–369, §6(c)(15), added subsec. (r).

1974—Subsec. (b)(3). Pub. L. 93–495 added par. (3).

1966—Subsec. (a). Pub. L. 89–695, §204, enlarged the authority of the Corporation to institute involuntary termination proceedings against an insured bank which had engaged in or whose directors or trustees had engaged in, rather than merely continued unsafe or unsound practices, or was in an unsafe or unsound condition to continue operations as an insured bank, or had violated any law, rule, regulation or order, or any condition imposed in writing by the Corporation or any written agreement entered into with the Corporation; made it clear that the Corporation would be required to give the State authority a copy of the statement dealing the practices or violations where the State bank involved was a State member bank; provided for an alternative and shortened correction period of not less than twenty days in those cases where the Board of Directors of the Corporation on its discretion determined that the insurance risk of the Corporation was unduly jeopardized; provided the State authority with power to shorten the correction period in those cases involving State banks whether member or nonmember banks; transposed the position of the fourth and fifth sentences; and provided a bank whose insured status had been terminated with right of judicial review to the extent provided in subsec. (h) of this section.

Subsecs. (b) to (q). Pub. L. 89–695, §202, added subsecs. (b) to (n) and redesignated former subsecs. (b) to (d) as (*o*) to (q), respectively.

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see sec-

tion 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(6)(A) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Amendment by sections 1603(d)(2)–(4) and 1605(a)(5)(A), (11) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 131(c)(1), (2) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 131(f) of Pub. L. 102–242, set out as a note under section 1464 of this title.

Amendment by section 302(e)(4) of Pub. L. 102–242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102–242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2547(a)(3) of Pub. L. 101–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to all written agreements which are entered into and all written statements which become effective after the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 903(a) of Pub. L. 101–73 applicable with respect to violations committed and activities engaged in after Aug. 9, 1989, see section 903(e) of Pub. L. 101–73, set out as a note under section 1786 of this title.

Amendment by section 907(a) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE OF REGULATIONS PRESCRIBED UNDER 1986 AMENDMENT

The regulations required to be prescribed under amendment by Pub. L. 99–570 effective at end of 3-month period beginning on Oct. 27, 1986, see section 1364(e) of Pub. L. 99–570, set out as a note under section 1464 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630, except for amendment by section 107(e)(1), effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

Amendment by section 107(e)(1) of Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending sections 1464, 1730, 1813, 1817 to 1820 and repealing section 77 of this title and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

IMPROVED ADMINISTRATIVE HEARINGS AND PROCEDURES FOR FEDERAL BANKING AGENCIES AND NATIONAL CREDIT UNION ADMINISTRATION BOARD

Section 916 of Pub. L. 101–73 provided that before close of 24-month period beginning on Aug. 9, 1989, appropriate Federal banking agencies (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) and National Credit Union Administration Board jointly establish their own pool of administrative law judges and develop a set of uniform rules and procedures for administrative hearings, including provisions for summary judgment rulings where there are no disputes as to material facts of the case.

TASK FORCE STUDY OF DELEGATION OF ENFORCEMENT ACTIONS

Section 917 of Pub. L. 101–73 directed appropriate Federal banking agencies (as defined in section 1813(q) of this title and National Credit Union Administration Board to create a joint task force to study desirability and feasibility of delegating investigation and enforcement authority to their regional or district offices or banks, provided for composition of task force, and required that not later than Sept. 30, 1990, task force report to Congress its findings and recommendations, together with responses of Comptroller of the Currency, Director of Office of Thrift Supervision, Chairperson of Federal Deposit Insurance Corporation, Chairman of Board of Governors of Federal Reserve System, and Chairman of National Credit Union Administration.

CREDIT STANDARDS ADVISORY COMMITTEE

Section 1205 of Pub. L. 101–73, as amended by Pub. L. 102–242, title IV, § 422, Dec. 19, 1991, 105 Stat. 2377, provided that:

''(a) ESTABLISHMENT.—There is hereby established the Credit Standards Advisory Committee (in this section referred to as the 'Committee').

''(b) MEMBERSHIP.—

''(1) APPOINTMENT.—The Committee shall consist of 11 members, as follows:

''(A) The Chairman of the Board of Governors of the Federal Reserve System, or the Chairman's designee.

''(B) The Director of the Office of Thrift Supervision, or the Director's designee.

''(C) The Chairperson of the Federal Deposit Insurance Corporation, or the Chairperson's designee.

''(D) The Comptroller of the Currency, or the Comptroller's designee.

''(E) The Chairman of the National Credit Union Administration, or the Chairman's designee.

''(F) 6 members of the public appointed by the President who are knowledgeable with the credit standards and lending practices of insured depository institutions, no more than 3 of whom shall be from the same political party.

''(2) TERMS.—Each member appointed under paragraph (1)(F) shall serve for the life of the Committee.

''(3) CHAIRPERSON.—The Chairperson of the Committee shall be designated by the President from among the members appointed under paragraph (1)(F).

''(4) VACANCIES.—Any vacancy on the Committee shall be filled in the manner in which the original appointment was made.

''(5) PAY AND EXPENSES.—Members of the Committee shall serve without pay but each member of the Committee shall be reimbursed for expenses incurred in connection with attendance of such members at meetings of the Committee. All expenses of the Committee shall be shared on a pro rata basis, based upon each agency's total budget for the preceding year by the Federal financial regulators specified in subparagraphs (A) through (E) of paragraph (1).

''(6) MEETINGS.—The Committee shall meet, not less frequently than quarterly, at the call of the chairperson or a majority of the members.

''(c) DUTIES OF THE COMMITTEE.—The Committee shall do the following:

''(1) REVIEW CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Review the credit standards and lending practices of insured depository institutions and the supervision of such standards and practices by the Federal financial regulators.

''(2) PREPARE RECOMMENDATIONS.—Prepare written comments and recommendations for the Federal financial regulators to ensure that insured depository institutions adhere to prudential credit standards and lending practices that are consistent for all insured depository institutions, to the maximum extent possible.

''(3) MONITOR CREDIT STANDARDS, LENDING PRACTICES, AND SUPERVISION BY FEDERAL REGULATORS.—Monitor the credit standards and lending practices of insured depository institutions, and the supervision of such standards and practices by the Federal financial regulators, to ensure that insured depository institutions can meet the demands of a modern and globally competitive financial world.

''(d) ANNUAL REPORT.—

''(1) REQUIRED.—Not later than January 30 of each year, the Committee shall submit a report to the Committee on Banking, Finance and Urban Affairs [now Committee on Financial Services] of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

''(2) CONTENTS.—The report required by paragraph (1) shall describe the activities of the Committee during the preceding year and the reports and recommendations made by the Committee to the Federal financial regulators.

''(e) CONFLICT OF INTEREST GUIDELINES.—The Committee shall prescribe such guidelines as the Committee determines to be appropriate to avoid conflicts of interest with respect to the disclosure to and use by members of the Committee of information relating to insured depository institutions and the Federal financial regulators.

''(f) FEDERAL ADVISORY COMMITTEE ACT DOES NOT APPLY.—The Federal Advisory Committee Act [5 App. U.S.C.] shall not apply with respect to the Committee.''

[For termination, effective May 15, 2000, of reporting provisions under 1205(d) of Pub. L. 101–73, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 159 of House Document No. Pub. L. 103–7.]

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in sections 202 and 204 of Pub. L. 89–695 amending this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of Title 15, Commerce and Trade, abolished the Reconstruction Finance Corporation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 92a, 93, 164, 205, 324, 371b–2, 375a, 504, 505, 1422b, 1464, 1467, 1467a, 1468, 1786, 1813, 1817, 1820, 1821, 1828, 1831b, 1831g, 1831m, 1831m–1, 1831*o*, 1831p–1, 1835a, 1841, 1843, 1847, 1848a, 1867, 1972, 2804, 2805, 3108, 3110, 3349, 3420, 3907, 3908, 3909, 4009, 4309, 4717, 4909 of this title; title 15 sections 57a, 78*o*–4, 78*o*–5, 78q–1, 1607, 1681s, 1691c, 1692*l*, 1693*o*, 6505, 6805, 6822; title 18 section 981; title 31 sections 3121, 9110.

§ 1819. Corporate powers

(a) In general

Upon June 16, 1933, the Corporation shall become a body corporate and as such shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until dissolved by an Act of Congress.

Third. To make contracts.

Fourth. To sue and be sued, and complain and defend, by and through its own attorneys, in any court of law or equity, State or Federal.

Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this chapter, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this chapter or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted.

Eighth. To make examinations of and to require information and reports from depository institutions, as provided in this chapter.

Ninth. To act as receiver.

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this chapter or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(b) Agency authority

(1) Status

The Corporation, in any capacity, shall be an agency of the United States for purposes of section 1345 of title 28 without regard to whether the Corporation commenced the action.

(2) Federal court jurisdiction

(A) In general

Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any ca-

pacity, is a party shall be deemed to arise under the laws of the United States.

(B) Removal

Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

(C) Appeal of remand

The Corporation may appeal any order of remand entered by any United States district court.

(D) State actions

Except as provided in subparagraph (E), any action—

(i) to which the Corporation, in the Corporation's capacity as receiver of a State insured depository institution by the exclusive appointment by State authorities, is a party other than as a plaintiff;

(ii) which involves only the preclosing rights against the State insured depository institution, or obligations owing to, depositors, creditors, or stockholders by the State insured depository institution; and

(iii) in which only the interpretation of the law of such State is necessary,

shall not be deemed to arise under the laws of the United States.

(E) Rule of construction

Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

(3) Service of process

The Board of Directors shall designate agents upon whom service of process may be made in any State, territory, or jurisdiction in which any insured depository institution is located.

(4) Bonds or fees

The Corporation shall not be required to post any bond to pursue any appeal and shall not be subject to payments of any filing fees in United States district courts or courts of appeal.

(Sept. 21, 1950, ch. 967, § 2[9], 64 Stat. 881; Pub. L. 89–695, title II, § 205, Oct. 16, 1966, 80 Stat. 1055; Pub. L. 95–630, title III, § 309, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 101–73, title II, § 209, Aug. 9, 1989, 103 Stat. 216; Pub. L. 102–242, title I, § 161(d), Dec. 19, 1991, 105 Stat. 2286; Pub. L. 103–325, title III, § 331(e), Sept. 23, 1994, 108 Stat. 2232.)

PRIOR PROVISIONS

Section is derived from subsec. (j) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325 in par. Fourth inserted "by and through its own attorneys," after "complain and defend,".

1991—Subsec. (b)(2)(B). Pub. L. 102–242 inserted before period at end "before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party".

1989—Subsec. (a). Pub. L. 101–73, § 209(2), designated existing provisions as subsec. (a) and inserted heading.

Pub. L. 101–73, § 209(3), amended par. Fourth generally. Prior to amendment, par. Fourth read as follows: "Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect, except that any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board of Directors shall designate an agent upon whom service of process may be made in any State, Territory, or jurisdiction in which any insured bank is located."

Pub. L. 101–73, § 209(1), in par. Eighth, substituted reference to depository institutions for reference to banks.

Subsec. (b). Pub. L. 101–73, § 209(4), added subsec. (b).

1978—Pub. L. 95–630 in par. Tenth inserted "or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency)" after "provisions of this chapter".

1966—Pub. L. 89–695 in par. Fourth vested United States district courts, without regard to the amount in controversy, with original jurisdiction over any action to which the Corporation is a party and authorized the removal of such actions to the Federal courts.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which provided that: "The provisions of titles I and II of this Act [amending sections 1464, 1730, 1813, 1817 to 1820 and repealing section 77 of this title and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted."

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in section 205 of Pub. L. 89–695 amending subsec. Fourth of this section to be con-

strued as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5373.

§ 1820. Administration of Corporation

(a) Board of Directors; use of mails; cooperation with other Federal agencies

The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination. The Board of Directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The Corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The Corporation with the consent of any Federal Reserve bank or of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out the provisions of this chapter.

(b) Examinations

(1) Appointment of examiners and claims agents

The Board of Directors shall appoint examiners and claims agents.

(2) Regular examinations

Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine—

(A) any insured State nonmember bank (except a District bank) or insured State branch of any foreign bank;

(B) any depository institution which files an application with the Corporation to become an insured depository institution; and

(C) any insured depository institution in default,

whenever the Board of Directors determines an examination of any such depository institution is necessary.

(3) Special examination of any insured depository institution

In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution whenever the Board of Directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes.

(4) Examination of affiliates

(A) In general

In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any depository institution as may be necessary to disclose fully—

(i) the relationship between such depository institution and any such affiliate; and

(ii) the effect of such relationship on the depository institution.

(B) Commitment by foreign banks to allow examinations of affiliates

No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this chapter.

(5) Examination of insured State branches

The Board of Directors shall—

(A) coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 3105(c)(1) of this title; and

(B) to the extent possible, participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under such section.

(6) Power and duty of examiners

Each examiner appointed under paragraph (1) shall—

(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), (4), or (5); and

(B) shall make a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation.

(7) Power of claim agents

Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.

(c) Administration of oaths and affirmations; evidence; subpena powers

In connection with examinations of insured depository institutions and any State nonmember bank, savings association, or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 1818(n) of this title.

(d) Annual on-site examinations of all insured depository institutions required

(1) In general

The appropriate Federal banking agency shall, not less than once during each 12-month period, conduct a full-scope, on-site examination of each insured depository institution.

(2) Examinations by Corporation

Paragraph (1) shall not apply during any 12-month period in which the Corporation has conducted a full-scope, on-site examination of the insured depository institution.

(3) State examinations acceptable

The examinations required by paragraph (1) may be conducted in alternate 12-month periods, as appropriate, if the appropriate Federal banking agency determines that an examination of the insured depository institution conducted by the State during the intervening 12-month period carries out the purpose of this subsection.

(4) 18-month rule for certain small institutions

Paragraphs (1), (2), and (3) shall apply with ''18-month'' substituted for ''12-month'' if—

(A) the insured depository institution has total assets of less than $250,000,000;

(B) the institution is well capitalized, as defined in section 1831*o* of this title;

(C) when the institution was most recently examined, it was found to be well managed, and its composite condition—

(i) was found to be outstanding; or

(ii) was found to be outstanding or good, in the case of an insured depository institution that has total assets of not more than $100,000,000;

(D) the insured institution is not currently subject to a formal enforcement proceeding or order by the Corporation or the appropriate Federal banking agency; and

(E) no person acquired control of the institution during the 12-month period in which a full-scope, on-site examination would be required but for this paragraph.

(5) Certain Government-controlled institutions exempted

Paragraph (1) does not apply to—

(A) any institution for which the Corporation or the Resolution Trust Corporation is conservator; or

(B) any bridge bank, none of the voting securities of which are owned by a person or agency other than the Corporation or the Resolution Trust Corporation.

(6) Coordinated examinations

To minimize the disruptive effects of examinations on the operations of insured depository institutions—

(A) each appropriate Federal banking agency shall, to the extent practicable and consistent with principles of safety and soundness and the public interest—

(i) coordinate examinations to be conducted by that agency at an insured depository institution and its affiliates;

(ii) coordinate with the other appropriate Federal banking agencies in the conduct of such examinations;

(iii) work to coordinate with the appropriate State bank supervisor—

(I) the conduct of all examinations made pursuant to this subsection; and

(II) the number, types, and frequency of reports required to be submitted to such agencies and supervisors by insured depository institutions, and the type and amount of information required to be included in such reports; and

(iv) use copies of reports of examinations of insured depository institutions made by any other Federal banking agency or appropriate State bank supervisor to eliminate duplicative requests for information; and

(B) not later than 2 years after September 23, 1994, the Federal banking agencies shall jointly establish and implement a system for determining which one of the Federal banking agencies or State bank supervisors shall be the lead agency responsible for managing a unified examination of each insured depository institution and its affiliates, as required by this subsection.

(7) Separate examinations permitted

Notwithstanding paragraph (6), each appropriate Federal banking agency may conduct a separate examination in an emergency or under other exigent circumstances, or when the agency believes that a violation of law may have occurred.

(8) Report

At the time the system provided for in paragraph (6) is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

(9) Standards for determining adequacy of State examinations

The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

(10) Agencies authorized to increase maximum asset amount of institutions for certain purposes

At any time after the end of the 2-year period beginning on September 23, 1994, the appropriate Federal banking agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $100,000,000 to an amount not to exceed $250,000,000 for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the principles of safety and soundness for insured depository institutions.

(e) Examination fees

(1) Regular and special examinations of depository institutions

The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) of this section may be assessed by the Corporation against the institution to meet the Corporation's expenses in carrying out such examinations.

(2) Examination of affiliates

The cost of conducting any examination of any affiliate of any insured depository institution under subsection (b)(4) of this section may be assessed by the Corporation against each affiliate which is examined to meet the Corporation's expenses in carrying out such examination.

(3) Assessment against depository institution in case of affiliate's refusal to pay

(A) In general

Subject to subparagraph (B), if any affiliate of any insured depository institution—

(i) refuses to pay any assessment under paragraph (2); or

(ii) fails to pay any such assessment before the end of the 60-day period beginning on the date the affiliate receives notice of the assessment,

the Corporation may assess such cost against, and collect such cost from, the depository institution.

(B) Affiliate of more than 1 depository institution

If any affiliate referred to in subparagraph (A) is an affiliate of more than 1 insured depository institution, the assessment under subparagraph (A) may be assessed against the depository institutions in such proportions as the Corporation determines to be appropriate.

(4) Civil money penalty for affiliate's refusal to cooperate

(A) Penalty imposed

If any affiliate of any insured depository institution—

(i) refuses to permit an examiner appointed by the Board of Directors under subsection (b)(1) of this section to conduct an examination; or

(ii) refuses to provide any information required to be disclosed in the course of any examination,

the depository institution shall forfeit and pay a penalty of not more than $5,000 for each day that any such refusal continues.

(B) Assessment and collection

Any penalty imposed under subparagraph (A) shall be assessed and collected by the Corporation in the manner provided in section 1818(i)(2) of this title.

(5) Deposits of examination assessment

Amounts received by the Corporation under this subsection (other than paragraph (4)) may be deposited in the manner provided in section 1823 of this title.

(f) Preservation of records by photography; admissibility as evidence

The Corporation may cause any and all records, papers, or documents kept by it or in its possession or custody to be photographed or microphotographed or otherwise reproduced upon film, which photographic film shall comply with the minimum standards of quality approved for permanent photographic records by the National Institute of Standards and Technology. Such photographs, microphotographs, or photographic film or copies thereof shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies and shall be admissible to prove any act, transaction, occurrence, or event therein recorded. Such photographs, microphotographs, or reproduction shall be preserved in such manner as the Board of Directors of the Corporation shall prescribe and the original records, papers, or documents may be destroyed or otherwise disposed of as the Board shall direct.

(g) Authority to prescribe regulations and definitions

Except to the extent that authority under this chapter is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may—

(1) prescribe regulations to carry out this chapter; and

(2) by regulation define terms as necessary to carry out this chapter.

(h) Coordination of examination authority

(1) In general

The appropriate State bank supervisor of a host State may examine a branch operated in such State by an out-of-State insured State bank that resulted from an interstate merger transaction approved under section 1831u of this title or a branch established in such State pursuant to section 36(g) of this title or section 1828(d)(4) of this title—

(A) for the purpose of determining compliance with host State laws, including those that govern banking, community reinvestment, fair lending, consumer protection, and permissible activities; and

(B) to ensure that the activities of the branch are not conducted in an unsafe or unsound manner.

(2) Enforcement

If the State bank supervisor of a host State determines that there is a violation of the law of the host State concerning the activities being conducted by a branch described in paragraph (1) or that the branch is being operated in an unsafe and unsound manner, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a State law enforcement officer may undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

(3) Cooperative agreement

The State bank supervisors from 2 or more States may enter into cooperative agreements

to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

(4) Federal regulatory authority

No provision of this subsection shall be construed as limiting in any way the authority of an appropriate Federal banking agency to examine or to take any enforcement actions or proceedings against any bank or branch of a bank for which the agency is the appropriate Federal banking agency.

(i) Flood insurance compliance by insured depository institutions

(1) Examinations

The appropriate Federal banking agency shall, during each scheduled on-site examination required by this section, determine whether the insured depository institution is complying with the requirements of the national flood insurance program.

(2) Report

(A) Requirement

Not later than 1 year after September 23, 1994, and biennially thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to the Congress on compliance by insured depository institutions with the requirements of the national flood insurance program.

(B) Contents

Each report submitted under this paragraph shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(j) Consultation among examiners

(1) In general

Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

(A) consult on examination activities with respect to any depository institution; and

(B) achieve an agreement and resolve any inconsistencies in the recommendations to be given to such institution as a consequence of any examinations.

(2) Examiner-in-charge

Each appropriate Federal banking agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the examiners of that agency involved in examinations of the institution.

(Sept. 21, 1950, ch. 967, § 2[10], 64 Stat. 882; Pub. L. 86–671, § 4, July 14, 1960, 74 Stat. 551; Pub. L. 89–695, title II, § 203, Oct. 16, 1966, 80 Stat. 1053; Pub. L. 91–452, title II, § 208, Oct. 15, 1970, 84 Stat. 929; Pub. L. 95–369, § 6(c)(16), Sept. 17, 1978, 92 Stat. 619; Pub. L. 95–630, title III, § 305, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 97–320, title I, § 113(i), title IV, § 410(g), Oct. 15, 1982, 96 Stat. 1474, 1520; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 101–73, title II, §§ 201(a), 210, Aug. 9, 1989, 103 Stat. 187, 217; Pub. L. 102–242, title I, §§ 111(a), 113(a), (b), (c)(2), title II, § 203(c), title III, § 302(d), Dec. 19, 1991, 105 Stat. 2240, 2246–2248, 2292, 2349; Pub. L. 102–550, title XVI, §§ 1603(b)(1), (4), 1604(a)(3), 1605(a)(4), Oct. 28, 1992, 106 Stat. 4078, 4079, 4082, 4085; Pub. L. 102–558, title III, §§ 303(b)(5), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103–325, title III, §§ 305(a), 306, 349(a), title V, § 529(a), title VI, § 602(a)(19), (20), Sept. 23, 1994, 108 Stat. 2216, 2217, 2242, 2266, 2289; Pub. L. 103–328, title I, § 105, Sept. 29, 1994, 108 Stat. 2357; Pub. L. 104–208, div. A, title II, §§ 2221, 2244, Sept. 30, 1996, 110 Stat. 3009–414, 3009–419.)

PRIOR PROVISIONS

Subsecs. (a), (b), [former] (e), and [former] (f) are derived from subsec. (k) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (d)(6)(B). Pub. L. 104–208, § 2244(b), which directed insertion of ''or State bank supervisors'' after ''one of the Federal agencies'', was executed by making the insertion after ''one of the Federal banking agencies'' to reflect the probable intent of Congress.

Subsec. (d)(8). Pub. L. 104–208, § 2221(1), redesignated par. (8), relating to agencies authorized to increase maximum asset amount of institutions for certain purposes, as (10).

Subsec. (d)(10). Pub. L. 104–208, § 2221(2), substituted ''$250,000,000'' for ''$175,000,000''.

Pub. L. 104–208, § 2221(1), redesignated par. (8), relating to agencies authorized to increase maximum asset amount of institutions for certain purposes, as (10).

Subsec. (j). Pub. L. 104–208, § 2244(a), added subsec. (j).

1994—Subsec. (b)(1). Pub. L. 103–325, § 602(a)(19), substituted ''claims'' for ''claim''.

Subsec. (b)(2)(B). Pub. L. 103–325, § 602(a)(20), inserted ''and'' at end.

Subsec. (d)(4)(A). Pub. L. 103–325, § 306(a)(1), substituted ''$250,000,000'' for ''$100,000,000''.

Subsec. (d)(4)(C). Pub. L. 103–325, § 306(a)(2), substituted ''and its composite condition—

''(i) was found to be outstanding; or

''(ii) was found to be outstanding or good, in the case of an insured depository institution that has total assets of not more than $100,000,000;''

for ''and its composite condition was found to be outstanding; and''.

Subsec. (d)(4)(D), (E). Pub. L. 103–325, § 306(a)(3), (4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(6), (7). Pub. L. 103–325, § 305(a), added pars. (6) and (7).

Subsec. (d)(8). Pub. L. 103–325, § 306(b), added par. (8) relating to agencies authorized to increase maximum asset amount of institutions for certain purposes.

Pub. L. 103–325, § 305(a), added par. (8) relating to report requirements.

Subsec. (d)(9). Pub. L. 103–325, § 349(a), added par. (9).

Subsec. (h). Pub. L. 103–328 added subsec. (h).

Subsec. (i). Pub. L. 103–325, § 529(a), added subsec. (i).

1992—Subsec. (b)(6)(A). Pub. L. 102–550, § 1604(a)(3), substituted ''paragraph (2), (3), (4), or (5);'' for '' 'paragraph (2)' and all that follows through the semicolon'' resulting in no change in text.

Subsec. (d)(5). Pub. L. 102–550, § 1603(b)(1)(A), (B), inserted ''or the Resolution Trust Corporation'' in subpars. (A) and (B) and inserted a comma after ''bank'' in subpar. (B).

Subsec. (d)(6). Pub. L. 102–550, §1603(b)(1)(C), struck out par. (6) which read as follows: ''(6) CONSUMER COMPLIANCE EXAMINATIONS EXCLUDED.—For purposes of this subsection, the term 'full-scope, on-site examination' does not include a consumer compliance examination, as defined in section 41(b).''

Subsec. (e). Pub. L. 102–550, §1603(b)(4), amended directory language of Pub. L. 102–242, §113(a)(2). See 1991 Amendment note below.

Subsec. (g). Pub. L. 102–558, §303(b)(5), redesignated subsec. (f), relating to authority to prescribe regulations and definitions, as (g). Pub. L. 102–550, §1605(a)(4), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, §305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

1991—Subsec. (b)(2)(B). Pub. L. 102–242, §113(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''any savings association, State nonmember bank, or State branch of a foreign bank, or other depository institution which files an application with the Corporation to become an insured depository institution; and''.

Subsec. (b)(4)(A). Pub. L. 102–242, §113(c)(2), struck out ''insured'' before ''depository institution'' in three places.

Subsec. (b)(5) to (7). Pub. L. 102–242, §203(c), added par. (5), redesignated former par. (5) as (6) and substituted ''(4), or (5)'' for ''or (4)'', and redesignated former par. (6) as (7).

Subsec. (d). Pub. L. 102–242, §111(a), added subsec. (d).

Subsec. (e). Pub. L. 102–242, §113(a)(2), as amended by Pub. L. 102–550, §1603(b)(4), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 102–242, §302(d), added subsec. (f) relating to authority to prescribe regulations and definitions.

Pub. L. 102–242, §113(a)(1), redesignated subsec. (e), relating to preservation of records by photography, as (f).

1989—Subsec. (b). Pub. L. 101–73, §210(a), amended subsec. (b) generally, revising and restating as pars. (1) to (6) provisions formerly contained in a single unnumbered paragraph.

Subsec. (c). Pub. L. 101–73, §210(b)(1), substituted ''and any State nonmember bank, savings association, or other institution'' for '', State nonmember banks or other institutions''.

Pub. L. 101–73, §201(a), substituted ''insured depository institutions'' for ''insured banks'' wherever appearing.

Subsec. (d). Pub. L. 101–73, §210(b)(2), struck out subsec. (d) which defined ''affiliate'' and ''member bank'' for purposes of this section.

1988—Subsec. (e). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

1982—Subsec. (b). Pub. L. 97–320, §113(i), inserted ''or any insured Federal savings bank,'' after ''foreign bank, or District bank,''.

Subsec. (d). Pub. L. 97–320, §410(g), inserted ''as in section 221a(b) of this title and''.

1978—Subsec. (b). Pub. L. 95–630, §305(a), inserted ''or other institution'' after ''any State nonmember bank'' and struck out provisions that each claim agent have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured deposits, and to issue subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carriers on business and that such courts have jurisdiction and power to order and require compliance with any such subpena.

Pub. L. 95–369 inserted ''any insured State branch of a foreign bank, any State branch of a foreign bank making application to become an insured bank'' after ''(except a District bank)'', inserted ''or branch'' after ''and any closed insured bank'', substituted ''any national bank, insured Federal branch of a foreign bank, or District bank'' for ''any national bank or District bank'' and inserted ''and in the case of a foreign bank, a binding commitment by such bank to permit such examination to the extent determined by the Board of Directors to be necessary to carry out the purposes of this chapter shall be required as a condition to the insurance of any deposits'' after ''effect of such relations upon such banks''.

Subsec. (c). Pub. L. 95–630, §305(b), among other changes, inserted references to State nonmember banks, other institutions making application to become insured banks, and investigations to determine compliance with applicable law and regulations and struck out provisions defining ''affiliate'' and ''member bank''.

Subsec. (d). Pub. L. 95–630, §305(b), substituted provisions defining the terms ''affiliate'' and ''member bank'' for provisions relating to the enforcement of subpenas and orders.

1970—Subsec. (d). Pub. L. 91–452 struck out provisions which granted immunity from prosecution for any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1966—Subsec. (b). Pub. L. 89–695 empowered Corporation examiners making examinations of insured banks to make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon such banks, authorized Corporation claim agents to issue subpenas and subpenas duces tecum in connection with investigation and examination of claims for insured deposits and to apply to the proper United States district court for the enforcement of such subpenas and provided such courts with jurisdiction and power to order and require compliance with any such subpena.

Subsec. (c). Pub. L. 89–695 provided that in connection with examinations of insured banks and affiliates thereof, the appropriate Federal banking agency, or its designated representatives, could administer oaths and affirmations, take and preserve testimony under oath as to any matter in respect of the affairs or ownership of such bank or affiliate thereof, issue subpenas and subpenas duces tecum, and apply to the proper United States district court for the enforcement of such subpenas, provided such courts with jurisdiction and power to order and require compliance with any such subpena, and defined ''affiliate'' and ''member bank''.

1960—Subsecs. (e) to (g). Pub. L. 86–671 struck out subsecs. (e) and (f) which related to reports of condition by insured nonmember State banks and access by Corporation to information of other bank supervisory authorities, and redesignated subsec. (g) as (e). See section 1817(a)(1) and (2) of this title.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by section 303(b)(5) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improve-

ment Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 111(b) of Pub. L. 102–242 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective 1 year after the date of enactment of this Act [Dec. 19, 1991].''

Amendment by section 302(d) of Pub. L. 102–242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102–242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

EXPIRATION OF 1966 AMENDMENT

Pub. L. 91–609, title IX, § 908, Dec. 31, 1970, 84 Stat. 1811, repealed section 401 of Pub. L. 89–695 which had provided that: ''The provisions of titles I and II of this Act [amending sections 1464, 1730, 1813, 1817 to 1820 and repealing section 77 of this title and enacting provisions set out as notes under sections 1464, 1730, and 1813 of this title] and any provisions of law enacted by said titles shall be effective only during the period ending at the close of June 30, 1972. Effective upon the expiration of such period, each provision of law amended by either of such titles is further amended to read as it did immediately prior to the enactment of this Act [Oct. 16, 1966] and each provision of law repealed by either of such titles is reenacted.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–671 effective Jan. 1, 1961, see section 7 of Pub. L. 86–671, set out as a note under section 1817 of this title.

EFFECTIVE DATE OF INITIAL GUIDELINES

Section 349(b) of Pub. L. 103–325 provided that: ''The initial guidelines required to be issued pursuant to the amendment made by subsection (a) [amending this section] shall become effective not later than 1 year after the date of enactment of this Act [Sept. 23, 1994].''

TRANSITION RULE

Section 111(c) of Pub. L. 102–242 provided that: ''Notwithstanding section 10(d) of the Federal Deposit Insurance Act [12 U.S.C. 1820(d)] (as added by subsection (a)), during the period beginning on the date of enactment of this Act [Dec. 19, 1991] and ending on December 31, 1993, a full-scope, on-site examination of an insured depository institution is not required more often than once during every 18-month period, unless—

''(1) the institution, when most recently examined, was found to be in a less than satisfactory condition; or

''(2) 1 or more persons acquired control of the institution.''

CONDITIONS GOVERNING EMPLOYMENT OF PERSONNEL NOT REPEALED, MODIFIED, OR AFFECTED

Nothing contained in section 203 of Pub. L. 89–695 amending subsecs. (b) and (c) of this section to be construed as repealing, modifying, or affecting section 1829 of this title, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1464, 1820a, 1821, 1831v, 4204, 4224 of this title; title 18 section 3059A.

§ 1820a. Examination of investment companies

(a) Exclusive Commission authority

Except as provided in subsection (c) of this section, a Federal banking agency may not inspect or examine any registered investment company that is not a bank holding company or a savings and loan holding company.

(b) Examination results and other information

The Commission shall provide to any Federal banking agency, upon request, the results of any examination, reports, records, or other information with respect to any registered investment company to the extent necessary for the agency to carry out its statutory responsibilities.

(c) Certain examinations authorized

Nothing in this section shall prevent the Corporation, if the Corporation finds it necessary to determine the condition of an insured depository institution for insurance purposes, from examining an affiliate of any insured depository institution, pursuant to its authority under section 1820(b)(4) of this title, as may be necessary to disclose fully the relationship between the insured depository institution and the affiliate, and the effect of such relationship on the insured depository institution.

(d) Definitions

For purposes of this section, the following definitions shall apply:

(1) Bank holding company

The term ''bank holding company'' has the meaning given the term in section 1841 of this title.

(2) Commission

The term ''Commission'' means the Securities and Exchange Commission.

(3) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(4) Federal banking agency

The term ''Federal banking agency'' has the meaning given the term in section 1813(z) of this title.

(5) Insured depository institution

The term ''insured depository institution'' has the meaning given the term in section 1813(c) of this title.

(6) Registered investment company

The term ''registered investment company'' means an investment company that is registered with the Commission under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(7) Savings and loan holding company

The term ''savings and loan holding company'' has the meaning given the term in section 1467a(a)(1)(D) of this title.

(Pub. L. 106–102, title I, § 115, Nov. 12, 1999, 113 Stat. 1371.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (d)(6), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

EFFECTIVE DATE

Section effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

§ 1821. Insurance Funds

(a) Deposit insurance

(1) INSURED AMOUNTS PAYABLE.—

(A) IN GENERAL.—The Corporation shall insure the deposits of all insured depository institutions as provided in this chapter.

(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount due to any depositor at an insured depository institution shall not exceed $100,000 as determined in accordance with subparagraphs (C) and (D).

(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in paragraph (1) or (2) of section 1817(i) of this title or any funds described in section 1817(i)(3) of this title.

(D) COVERAGE ON PRO RATA OR ''PASS-THROUGH'' BASIS.—

(i) IN GENERAL.—Except as provided in clause (ii), for the purpose of determining the amount of insurance due under subparagraph (B), the Corporation shall provide deposit insurance coverage with respect to deposits accepted by any insured depository institution on a pro rata or ''pass-through'' basis to a participant in or beneficiary of an employee benefit plan (as defined in subsection (a)(8)(B)(ii) of this section), including any eligible deferred compensation plan described in section 457 of title 26.

(ii) EXCEPTION.—After the end of the 1-year period beginning on December 19, 1991, the Corporation shall not provide insurance coverage on a pro rata or ''pass-through'' basis pursuant to clause (i) with respect to deposits accepted by any insured depository institution which, at the time such deposits are accepted, may not accept brokered deposits under section 1831f of this title.

(iii) COVERAGE UNDER CERTAIN CIRCUMSTANCES.—Clause (ii) shall not apply with respect to any deposit accepted by an insured depository institution described in such clause if, at the time the deposit is accepted—

(I) the institution meets each applicable capital standard; and

(II) the depositor receives a written statement from the institution that such deposits at such institution are eligible for insurance coverage on a pro rata or ''pass-through'' basis.

(2)(A) Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, in the case of a depositor who is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed $100,000 per account in an amount not to exceed $100,000 per account.[1]

(B) The Corporation may limit the aggregate amount of funds that may be invested or depos-

[1] So in original. The second occurrence of the phrase ''in an amount not to exceed $100,000 per account'' probably should not appear.

ited in deposits in any insured depository institution by any depositor referred to in subparagraph (A) of this paragraph on the basis of the size of any such bank[2] in terms of its assets: *Provided, however*, such limitation may be exceeded by the pledging of acceptable securities to the depositor referred to in subparagraph (A) of this paragraph when and where required.

(3) CERTAIN RETIREMENT ACCOUNTS.—

(A) IN GENERAL.—Notwithstanding any limitation in this chapter relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

(i) any individual retirement account described in section 408(a) of title 26;

(ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of title 26; and

(iii) any individual account plan defined in section 1002(34) of title 29, and any plan described in section 401(d) of title 26, to the extent that participants and beneficiaries under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed $100,000 per participant per insured depository institution.

(B) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) GENERAL PROVISIONS RELATING TO FUNDS.—

(A) MAINTENANCE AND USE OF FUNDS.—The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

(i) maintained and administered by the Corporation;

(ii) maintained separately and not commingled; and

(iii) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.

(B) LIMITATION ON USE.—Notwithstanding any provision of law other than section 1823(c)(4)(G) of this title, the Bank Insurance Fund and the Savings Association Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this chapter) of—

(i) any insured depository institution for which the Corporation or the Resolution Trust Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation or the Resolution Trust Corporation;

(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation or the Resolution Trust Corporation; or

(iii) any insured depository institution, in connection with the provision of assistance under this section or section 1823 of this title with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 1823(f)(8)(B) of this title) another insured depository institution.

(5) BANK INSURANCE FUND.—

(A) ESTABLISHMENT.—There is established a fund to be known as the Bank Insurance Fund.

(B) TRANSFER TO FUND.—On August 9, 1989, the Permanent Insurance Fund shall be dissolved and all assets and liabilities of the Permanent Insurance Fund shall be transferred to the Bank Insurance Fund.

(C) USES.—The Bank Insurance Fund shall be available to the Corporation for use with respect to Bank Insurance Fund members.

(D) DEPOSITS.—All amounts assessed against Bank Insurance Fund members by the Corporation shall be deposited into the Bank Insurance Fund.

(6) SAVINGS ASSOCIATION INSURANCE FUND.—

(A) ESTABLISHMENT.—There is established a fund to be known as the Savings Association Insurance Fund.

(B) USES.—The Savings Association Insurance Fund shall be available to the Corporation for use with respect to Savings Association Insurance Fund members.

(C) DEPOSITS.—All amounts assessed against Savings Association Insurance Fund members which are not required for the Financing Corporation, the Resolution Funding Corporation, or the FSLIC Resolution Fund shall be deposited in the Savings Association Insurance Fund.

(D) TREASURY PAYMENTS TO FUND.—To the extent of the availability of amounts provided in appropriation Acts and subject to subparagraphs (E) and (G), the Secretary of the Treasury shall pay to the Savings Association Insurance Fund such amounts as may be needed to pay losses incurred by the Fund in fiscal years 1994 through 1998.

(E) CERTIFICATION CONDITIONS ON AVAILABILITY OF FUNDING.—No amount appropriated for payments by the Secretary of the Treasury in accordance with subparagraph (D) for any fiscal year may be expended unless the Chairperson of the Board of Directors certifies to the Congress, at any time before the beginning of or during such fiscal year, that—

(i) such amount is needed to pay for losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund;

(ii) the Board of Directors has determined that—

(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 1817(b) of this title at the assessment rates which would be required in

[2] So in original. Probably should be ''depository institution''.

order to cover, from such additional assessments, losses which have been incurred or can reasonably be expected to be incurred by the Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government;

(iii) the Board of Directors has determined that—

(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 1817(b) of this title at the assessment rates which would be required in order to meet the repayment schedule required under section 1824(c) of this title for any amount borrowed under section 1824(a) of this title to cover losses which have been incurred or can reasonably be expected to be incurred by the Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government;

(iv) as of the date of certification, the Corporation has in effect procedures designed to ensure that the activities of the Savings Association Insurance Fund and the affairs of any Savings Association Insurance Fund member for which a conservator or receiver has been appointed are conducted in an efficient manner and the Corporation is in compliance with such procedures;

(v) with respect to the most recent audit of the Savings Association Insurance Fund by the Comptroller General of the United States before the date of the certification—

(I) the Corporation has taken or is taking appropriate action to implement any recommendation made by the Comptroller General; or

(II) no corrective action is necessary or appropriate;

(vi) the Corporation has provided for the appointment of a chief financial officer who—

(I) does not have other operating responsibilities;

(II) will report directly to the Chairperson of the Corporation; and

(III) will have such authority and duties of chief financial officers under section 902 of title 31 as the Board of Directors of the Corporation determines to be appropriate with respect to the Corporation;

(vii) the Corporation has provided for the appointment of a senior officer whose responsibilities shall include setting uniform standards for contracting and contracting enforcement in connection with the administration of the Fund;

(viii) the Corporation is implementing the minority outreach provisions mandated by section 1833e of this title;

(ix) the Corporation has provided for the appointment of a senior attorney, at the assistant general counsel level or above, responsible for professional liability cases; and

(x) the Corporation has improved the management of legal services by—

(I) utilizing staff counsel when such utilization would provide the same level of quality in legal services as the use of outside counsel at the same or a lower estimated cost; and

(II) employing outside counsel only if the use of outside counsel would provide the most practicable, efficient, and cost-effective resolution to the action and only under a negotiated fee, contingent fee, or competitively bid fee agreement.

(F) AVAILABILITY OF RTC FUNDING.—At any time before the end of the 2-year period beginning on the date of the termination of the Resolution Trust Corporation, the Secretary of the Treasury shall provide, out of funds appropriated to the Resolution Trust Corporation pursuant to section 1441a(i)(3) of this title and not expended by the Resolution Trust Corporation, to the Savings Association Insurance Fund, for any year such amounts as are needed by the Fund and are not needed by the Resolution Trust Corporation, if the Chairperson of the Board of Directors has certified to the Congress that—

(i) such amount is needed to pay for losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund;

(ii) the Board of Directors has determined that—

(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 1817(b) of this title at the assessment rates which would be required in order to cover, from such additional assessments, losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain the members' assessment base; and

(II) an increase in the assessment rates for Savings Association Insurance Fund members to cover such losses could reasonably be expected to result in greater losses to the Government;

(iii) the Board of Directors has determined that—

(I) Savings Association Insurance Fund members, in the aggregate, are unable to pay additional semiannual assessments under section 1817(b) of this title at the assessment rates which would be required in order to meet the repayment schedule required under section 1824(c) of this title for any amount borrowed under section 1824(a)

of this title to cover losses which have been incurred or can reasonably be expected to be incurred by the Savings Association Insurance Fund without adversely affecting the ability of such members to raise and maintain capital or to maintain such members' assessment base; and

(II) an increase in the assessment rates for Savings Association Insurance Fund members to meet any such repayment schedule could reasonably be expected to result in greater losses to the Government;

(iv) the Corporation has provided for the appointment of a chief financial officer who—

(I) does not have other operating responsibilities;

(II) will report directly to the Chairperson of the Corporation; and

(III) will have such authority and duties of chief financial officers under section 902 of title 31 as the Board of Directors of the Corporation determines to be appropriate with respect to the Corporation;

(v) the Corporation has provided for the appointment of a senior officer whose responsibilities shall include setting uniform standards for contracting and contracting enforcement in connection with the administration of the Fund;

(vi) the Corporation is implementing the minority outreach provisions mandated by section 1833e of this title;

(vii) the Corporation has provided for the appointment of a senior attorney, at the assistant general counsel level or above, responsible for professional liability cases; and

(viii) the Corporation has improved the management of legal services by—

(I) utilizing staff counsel when such utilization would provide the same level of quality in legal services as the use of outside counsel at the same or a lower estimated cost; and

(II) employing outside counsel only if the use of outside counsel would provide the most practicable, efficient, and cost-effective resolution to the action and only under a negotiated fee, contingent fee, or competitively bid fee agreement.

(G) EXCEPTION TO SUBPARAGRAPH (D).—Notwithstanding subparagraph (D), no payment may be made pursuant to such subparagraphs after the Savings Association Insurance Fund achieves a reserve ratio of 1.25 percent.

(H) APPEARANCE UPON REQUEST.—The Secretary of the Treasury and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation shall appear before the Committee on Banking, Finance and Urban Affairs of the House of Representatives or the Committee on Banking, Housing, and Urban Affairs of the Senate, upon the request of the chairman of the committee, to report on any certification made to the Congress under subparagraph (E) or (F).

(I) BORROWING AUTHORITY.—

(i) IN GENERAL.—The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Savings Association Insurance Fund.

(ii) TERMS AND CONDITIONS.—Any loan from any Federal home loan bank under clause (i) to the Savings Association Insurance Fund shall—

(I) bear a rate of interest of not less than such bank's current marginal cost of funds, taking into account the maturities involved;

(II) be adequately secured, as determined by the Federal Housing Finance Board;

(III) be a direct liability of such Fund; and

(IV) be subject to the limitations of section 1825(c) of this title.

(J) AUTHORIZATION OF APPROPRIATIONS.—Subject to subparagraph (E), there are authorized to be appropriated to the Secretary of the Treasury, such sums as may be necessary to carry out the provisions of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed $8,000,000,000.

(K) RETURN TO TREASURY.—If the aggregate amount of funds transferred to the Savings Association Insurance Fund under subparagraph (D) or (F) exceeds the amount needed to cover losses incurred by the Fund, such excess amount shall be deposited in the general fund of the Treasury.

(7) PROVISIONS APPLICABLE TO MAINTENANCE OF ACCOUNTS.—

(A) CORPORATION'S AUTHORITY.—Any provision of this chapter forbidding the commingling of the Bank Insurance Fund with the Savings Association Insurance Fund, or requiring the separate maintenance of the Bank Insurance Fund and the Savings Association Insurance Fund, is not intended—

(i) to limit or impair the authority of the Corporation to use the same facilities and resources in the course of conducting supervisory, regulatory, conservatorship, receivership, or liquidation functions with respect to banks and savings associations, or to integrate such functions; or

(ii) to limit or impair the Corporation's power to combine assets or liabilities belonging to banks and savings associations in conservatorship or receivership for managerial purposes, or to limit or impair the Corporation's power to dispose of such assets or liabilities on an aggregate basis.

(B) ACCOUNTING REQUIREMENTS.—

(i) ACCOUNTING FOR USE OF FACILITIES AND RESOURCES.—The Corporation shall keep a full and complete accounting of all costs and expenses associated with the use of any facility or resource used in the course of any function specified in subparagraph (A)(i) and shall allocate, in the manner provided in subparagraph (C), any such costs and expenses incurred by the Corporation—

(I) with respect to Bank Insurance Fund members to the Bank Insurance Fund; and

(II) with respect to Savings Association Insurance Fund members to the Savings Association Insurance Fund.

(ii) ACCOUNTING FOR HOLDING AND MANAGING ASSETS AND LIABILITIES.—The Corporation shall keep a full and complete accounting of all costs and expenses associated with the holding and management of any asset or liability specified in subparagraph (A)(ii).

(iii) ACCOUNTING FOR DISPOSITION OF ASSETS AND LIABILITIES.—The Corporation shall keep a full and complete accounting of all expenses and receipts associated with the disposition of any asset or liability specified in subparagraph (A)(ii).

(iv) ALLOCATION OF COST, EXPENSES AND RECEIPTS.—The Corporation shall allocate any cost, expense, and receipt described in clause (ii) or clause (iii) which is associated with any asset or liability belonging to—

(I) any Bank Insurance Fund member to the Bank Insurance Fund; and

(II) any Savings Association Insurance Fund member to the Savings Association Insurance Fund.

(C) ALLOCATION OF ADMINISTRATIVE EXPENSES.—Any personnel, administrative, or other overhead expense of the Corporation shall be allocated—

(i) fully to the Bank Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Bank Insurance Fund members;

(ii) fully to the Savings Association Insurance Fund, if the expense was incurred directly as a result of the Corporation's responsibilities solely with respect to Savings Association Insurance Fund members;

(iii) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative degree to which the expense was incurred as a result of the activities of Bank Insurance Fund and Savings Association Insurance Fund members; or

(iv) between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the relative total assets as of the end of the preceding calendar year of Bank Insurance Fund members and Savings Association Insurance Fund members, to the extent that the Board of Directors is unable to make a determination under clause (i), (ii), or (iii).

(8) CERTAIN INVESTMENT CONTRACTS NOT TREATED AS INSURED DEPOSITS.—

(A) IN GENERAL.—A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) BENEFIT-RESPONSIVE WITHDRAWALS OR TRANSFERS.—The term ''benefit-responsive withdrawals or transfers'' means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(ii) EMPLOYEE BENEFIT PLAN.—The term ''employee benefit plan''—

(I) has the meaning given to such term in section 1002(3) of title 29; and

(II) includes any plan described in section 401(d) of title 26.

(b) Liquidation as closing of depository institution

For the purposes of this chapter an insured depository institution shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) Appointment of Corporation as conservator or receiver

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) Federal depository institutions

(A) Appointment

(i) Conservator

The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution or District bank and the Corporation may accept such appointment.

(ii) Receiver

The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution or District bank by the appropriate Federal banking agency, notwithstanding any other provision of Federal law (other than section 1441a of this title) or the code of law for the District of Columbia.

(B) Additional powers

In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in

subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation's rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) Insured State depository institutions

(A) Appointment by appropriate State supervisor

Whenever the authority having supervision of any insured State depository institution (other than a District depository institution) appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) Additional powers

In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) Appointment of Corporation by the Corporation

Except as otherwise provided in section 1441a of this title and notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

(A) the Corporation determines—

(i) that—

(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

(II) such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and

(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

(i) existed with respect to such institution at the time—

(I) the conservator, receiver, or other legal custodian was appointed; or

(II) such institution was closed; or

(ii) exist at any time—

(I) during the appointment of the conservator, receiver, or other legal custodian; or

(II) while such institution is closed.

(5) Grounds for appointing conservator or receiver

The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

(D) CEASE AND DESIST ORDERS.—Any willful violation of a cease-and-desist order which has become final.

(E) CONCEALMENT.—Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) INABILITY TO MEET OBLIGATIONS.—The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) LOSSES.—The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 1831*o*(b) of this title) without Federal assistance.

(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund.

(I) CONSENT.—The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) CESSATION OF INSURED STATUS.—The institution ceases to be an insured institution.

(K) UNDERCAPITALIZATION.—The institution is undercapitalized (as defined in section 1831*o*(b) of this title), and—

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 1831*o*(f)(2)(A) of this title;

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 1831*o*(e)(2)(D) of this title; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1831*o*(e)(2) of this title.

(L) The institution—

(i) is critically undercapitalized, as defined in section 1831*o*(b) of this title; or

(ii) otherwise has substantially insufficient capital.

(M) MONEY LAUNDERING OFFENSE.—The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31.

(6) Appointment by Director of the Office of Thrift Supervision

(A) Conservator

The Corporation or the Resolution Trust Corporation may, at the discretion of the Director of the Office of Thrift Supervision, be appointed conservator and the Corporation may accept any such appointment.

(B) Receiver

Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of subparagraph (A) or (C) of section 1464(d)(2) of this title for the purpose of liquidation or winding up any savings association's affairs—

(i) before such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title, the Resolution Trust Corporation shall be appointed;

(ii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title, the Resolution Trust Corporation shall be appointed if the Resolution Trust Corporation had been placed in control of the depository institution at any time before such date; and

(iii) on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title, the Corporation shall be appointed unless the Resolution Trust Corporation is required to be appointed under clause (ii).

(7) Judicial review

If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.

(8) Replacement of conservator of State depository institution

(A) In general

In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) Replacement treated as removal of incumbent

The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) Right of review of original appointment not affected

The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) Appropriate Federal banking agency may appoint Corporation as conservator or receiver for insured State depository institution to carry out section 1831*o*

(A) In general

The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 1831*o* of this title.

(B) Nondelegation

The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) Corporation may appoint itself as conservator or receiver for insured depository institution to prevent loss to deposit insurance fund

The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the deposit insurance fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the deposit insurance fund is expected to incur with respect to that institution.

(11) Appropriate Federal banking agency shall not appoint conservator under certain provisions without giving Corporation opportunity to appoint receiver

The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

(12) Directors not liable for acquiescing in appointment of conservator or receiver

The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

(A) the appointment of the Corporation or the Resolution Trust Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 1831*o*(f)(2)(A)(iii) of this title.

(13) Additional powers

In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may—

(i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) Powers and duties of Corporation as conservator or receiver

(1) Rulemaking authority of Corporation

The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) General powers

(A) Successor to institution

The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(B) Operate the institution

The Corporation may (subject to the provisions of section 1831q of this title), as conservator or receiver—

(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

(ii) collect all obligations and money due the institution;

(iii) perform all functions of the institution in the name of the institution which are consistent with the appointment as conservator or receiver; and

(iv) preserve and conserve the assets and property of such institution.

(C) Functions of institution's officers, directors, and shareholders

The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

(D) Powers as conservator

The Corporation may, as conservator, take such action as may be—

(i) necessary to put the insured depository institution in a sound and solvent condition; and

(ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.

(E) Additional powers as receiver

The Corporation may (subject to the provisions of section 1831q of this title), as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) Organization of new institutions

The Corporation may, as receiver—

(i) with respect to savings associations and by application to the Director of the Office of Thrift Supervision, organize a new Federal savings association to take over such assets or such liabilities as the Corporation may determine to be appropriate; and

(ii) with respect to any insured bank, organize a new national bank under subsection (m) of this section or a bridge bank under subsection (n) of this section.

(G) Merger; transfer of assets and liabilities

(i) In general

The Corporation may, as conservator or receiver—

(I) merge the insured depository institution with another insured depository institution; or

(II) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

(ii) Approval by appropriate Federal banking agency

No transfer described in clause (i)(II) may be made to another depository institution (other than a new bank or a bridge bank established pursuant to subsection (m) or (n) of this section) without the approval of the appropriate Federal banking agency for such institution.

(H) Payment of valid obligations

The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this chapter.

(I) Subpoena authority

(i) In general

The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 1818(n) of this title, and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) Authority of Board of Directors

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 1441a(b)(4)[3] of this title, only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) Rule of construction

This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 1820(c) of this title.

(J) Incidental powers

The Corporation may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this chapter and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this chapter,

which the Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

(K) Utilization of private sector

In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, only if such services are available in the private sector and the Corporation determines utilization of such services is the most practicable, efficient, and cost effective.

(3) Authority of receiver to determine claims

(A) In general

The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) Notice requirements

The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—

(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) Mailing required

The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

[3] See References in Text note below.

(4) Rulemaking authority relating to determination of claims

(A) In general

The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(B) Final settlement payment procedure

(i) In general

In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

(ii) Final settlement payment

For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

(iii) Final settlement payment rate

For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

(iv) Corporation authority

The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the depository institution's books;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) Disallowance of claims filed after end of filing period

(i) In general

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) Authority to disallow claims

(i) In general

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) Payments to less than fully secured creditors

In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the institution; and

(II) may not make any payment with respect to such unsecured portion of the

claim other than in connection with the disposition of all claims of unsecured creditors of the institution.

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(II) any security interest in the assets of the institution securing any such extension of credit.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) Provision for agency review or judicial determination of claims

(A) In general

Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations

If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims

(A) Administrative hearing

If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5.

(B) Other review procedures

(i) In general

The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Corporation may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

(iv) Consideration of incentives

The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing

(i) Statute of limitation tolled

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(9) Agreement as basis of claim

(A) Requirements

Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 1823(e) of this title shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 1823(e)(2)[4] of this title, any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) Payment of claims

(A) In general

The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this chapter.

(B) Payment of dividends on claims

The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) Rulemaking authority of Corporation

The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

(11) Depositor preference

(A) In general

Subject to section 1815(e)(2)(C) of this title, amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

(i) Administrative expenses of the receiver.

(ii) Any deposit liability of the institution.

(iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).

(iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).

(v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

(B) Effect on State law

(i) In general

The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

[4] See References in Text note below.

(ii) Procedure for determination of inconsistency

Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

(iii) Judicial review

The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5.

(C) Accounting report

Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver,

in any judicial action or proceeding to which such institution is or becomes a party.

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties

(A) Prior final adjudication

The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) Rights and remedies of conservator or receiver

In the event of any appealable judgment, the Corporation as conservator or receiver shall—

(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of any insured depository institution for which the Corporation has been appointed conservator or receiver, including any sale or disposition of assets acquired by the Corporation under section 1823(d)(1) of this title, the Corporation shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(14) Statute of limitations for actions brought by conservator or receiver

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim (other than a claim which is subject to section 1441a(b)(14) of this title), the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(C) Revival of expired State causes of action

(i) In general

In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) Claims described

A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

(15) Accounting and recordkeeping requirements

(A) In general

The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.

(B) Annual accounting or report

With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.

(D) Recordkeeping requirement

After the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(16) Contracts with State housing finance authorities

(A) In general

The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1441a–1 of this title) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) Factors to consider

In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

(i) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;

(ii) the State housing finance authority's ability to further national housing policies;

(iii) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;

(iv) the costs to the Federal Government associated with alternative ownership or disposition of the mortgage related assets;

(v) the minimization of future guaranties which may be required of the Federal Government;

(vi) the maximization of mortgage related asset values; and

(vii) the utilization of institutions currently established in mortgage related asset market activities.

(17) Fraudulent transfers

(A) In general

The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) Rights of transferee or obligee

The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) Rights under this paragraph

The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(18) Attachment of assets and other injunctive relief

Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under this section or section 1822 or 1823 of this title); or

(B) any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision,

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) Standards

(A) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.

(20) Treatment of claims arising from breach of contracts executed by the receiver or conservator

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for an insured depository institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(e) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) Timing of repudiation

The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) of this section shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) No liability for other damages

For purposes of subparagraph (A), the term ''actual direct compensatory damages'' does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (i) of this section except as otherwise specifically provided in this section.

(4) Leases under which the institution is the lessee

(A) In general

If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (i) of this section.

(5) Leases under which the institution is the lessor

(A) In general

If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the insured depository institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) Contracts for the sale of real property

(A) In general

If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 1823(e) of this title) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) Provisions applicable to purchaser remaining in possession

If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (d) and (i) of this section; and

(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraph (10) of this subsection and notwithstanding any other provision of this chapter (other than subsection (d)(9) of this section and section 1823(e) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right to cause the termination or liquidation of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

(ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (d)(12) of this section shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

(D) Certain contracts and agreements defined

For purposes of this subsection—

(i) Qualified financial contract

The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation to be a qualified financial contract for purposes of this paragraph.

(ii) Securities contract

The term ''securities contract''—

(I) has the meaning given to such term in section 741 of title 11, except that the term ''security'' (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 78c(a)(41) of title 15), and any interest in any mortgage loan or mortgage-related security; and

(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

(iii) Commodity contract

The term ''commodity contract'' has the meaning given to such term in section 761 of title 11.

(iv) Forward contract

The term ''forward contract'' has the meaning given to such term in section 101 of title 11.

(v) Repurchase agreement

The term ''repurchase agreement''—

(I) has the meaning given to such term in section 101 of title 11, except that the items (as described in such section)

which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 78c(a)(41) of title 15), any mortgage loan, and any interest in any mortgage loan; and

(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.

(vi) Swap agreement

The term ''swap agreement''—

(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

(II) includes any combination of such agreements and any option to enter into any such agreement.

(vii) Treatment of master agreement as 1 swap agreement

Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement.

(viii) Transfer

The term ''transfer'' has the meaning given to such term in section 101 of title 11.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this chapter (other than paragraph (12) of this subsection, subsection (d)(9) of this section, and section 1823(e) of this title), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security arrangement relating to such qualified financial contracts; or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(9) Transfer of qualified financial contracts

In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

(A) transfer to 1 depository institution (other than a depository institution in default)—

(i) all qualified financial contracts between—

(I) any person or any affiliate of such person; and

(II) the depository institution in default;

(ii) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(iii) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(iv) all property securing any claim described in clause (ii) or (iii) under any such contract; or

(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).

(10) Notification of transfer

(A) In general

If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall use such conservator's or receiver's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.

(B) "Business day" defined

For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(12) Authority to enforce contracts

(A) In general

The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any

provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or depository institution bond under other applicable law.

(13) Exception for Federal Reserve and Federal home loan banks

No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(14) Selling credit card accounts receivable

(A) Notification required

An undercapitalized insured depository institution (as defined in section 1831*o* of this title) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

(B) Waiver by Corporation

The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the deposit insurance fund; and

(ii) provides a written waiver to the selling institution.

(C) Effect of waiver on successors

(i) In general

If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

(ii) Exception

Clause (i)(II) does not—

(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

(II) require the acquirer to restrict any preexisting relationship between the acquirer and a customer; or

(III) apply to any transaction in which the acquirer acquires only insured deposits.

(D) Waiver not actionable

The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

(E) Other authority not affected

This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

(15) Certain credit card customer lists protected

(A) In general

If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 1823 of this title from using the list, except as permitted under the agreement.

(B) Fraudulent transactions excluded

Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.

(f) Payment of insured deposits

(1) In general

In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section, either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor, except that—

(A) all payments made pursuant to this section on account of a closed Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and

(B) all payments made pursuant to this section on account of a closed Savings Association Insurance Fund member shall be made only from the Savings Association Insurance Fund.

(2) Proof of claims

The Corporation, in its discretion, may require proof of claims to be filed and may ap-

prove or reject such claims for insured deposits.

(3) Resolution of disputes

(A) Resolutions in accordance with Corporation regulations

In the case of any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit, the Corporation may resolve such disputed claim in accordance with regulations prescribed by the Corporation establishing procedures for resolving such claims.

(B) Adjudication of claims

If the Corporation has not prescribed regulations establishing procedures for resolving disputed claims, the Corporation may require the final determination of a court of competent jurisdiction before paying any such claim.

(4) Review of Corporation's determination

Final determination made by the Corporation shall be reviewable in accordance with chapter 7 of title 5 by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the principal place of business of the depository institution is located.

(5) Statute of limitations

Any request for review of a final determination by the Corporation shall be filed with the appropriate circuit court of appeals not later than 60 days after such determination is ordered.

(g) Subrogation of Corporation

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) of this section in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 1823 of this title, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) Dividends on subrogated amounts

The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) Waiver of certain claims

With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

(4) Applicability of State law

Subject to subsection (d)(11) of this section, if the Corporation is appointed pursuant to subsection (c)(3) of this section, or determines not to invoke the authority conferred in subsection (c)(4) of this section, the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

(h) Conditions applicable to resolution proceedings

(1) Consideration of local economic impact required

The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) Actions to alleviate adverse economic impact to be considered

The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

(3) Guidelines required

The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(4) Financial services industry impact analysis

After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 1823 of this title in connection with the resolution of such institution, the Corporation shall—

(A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and

(B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.

(i) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of

default, including transactions authorized under subsection (n) of this section and section 1823(c) of this title, this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) Maximum liability

The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 1823 of this title.

(3) Additional payments authorized

(A) In general

The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) Source of funds

If the depository institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the depository institution in default is a Savings Association Insurance Fund member, the Corporation may only make such payments out of funds held in the Savings Association Insurance Fund.

(C) Manner of payment

The Corporation may make the payments or credit the amounts specified in subparagraphs (A) and (B) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) Limitation on court action

Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) Liability of directors and officers

A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(1) acting as conservator or receiver of such institution,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 1823 of this title,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

(*l*) Damages

In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) New banks

(1) Organization authorized

As soon as possible after the default of an insured bank, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured bank in default or the public shall organize a new national bank in the same community as the bank in default to assume the insured deposits of such bank in default and otherwise to perform temporarily the functions hereinafter provided for.

(2) Articles of association

The articles of association and the organization certificate of the new bank shall be executed by representatives designated by the Corporation.

(3) Capital stock

No capital stock need be paid in by the Corporation.

(4) Executive officer

The new bank shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions.

(5) Subject to laws relating to national banks

In all other respects the new bank shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.

(6) New deposits

The new bank may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new bank is the only bank in the community, shall not exceed $100,000 from any depositor.

(7) Insured status

The new bank, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.

(8) Investments

Funds of the new bank shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.

(9) Conduct of business

The new bank, unless otherwise authorized by the Comptroller of the Currency, shall transact business only as authorized by this chapter and as may be incidental to its organization.

(10) Exempt status

Notwithstanding any other provision of Federal or State law, the new bank, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) Transfer of deposits

(A) Upon the organization of a new bank, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such bank in default plus the estimated amount of the expenses of operating the new bank, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the bank in default, and the total expenses of operation of the new bank.

(B) Upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined.

(12) Earnings

Earnings of the new bank shall be paid over or credited to the Corporation in such adjustment.

(13) Losses

If any new bank, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured bank, the Corporation shall furnish to it additional funds in the amount of such losses.

(14) Payment of insured deposits

(A) The new bank shall assume as transferred deposits the payment of the insured deposits of such bank in default to each of its depositors.

(B) Of the amounts so made available, the Corporation shall transfer to the new bank, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new bank on demand.

(15) Issuance of stock

(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new bank to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new bank on a sound basis, but in no event less than that required by section 51[5] of this title for the organization of a national bank in the place where such new bank is located.

(B) The stockholders of the insured bank in default shall be given the first opportunity to purchase any shares of common stock so offered.

(16) Issuance of certificate

Upon proof that an adequate amount of capital stock in the new bank has been subscribed and paid for in cash, the Comptroller of the Currency shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank, and thereafter, when the requirements of law with respect to the organization of a national bank have been complied with, the Comptroller of the Currency shall issue to the bank a certificate of authority to commence business, and thereupon the bank shall cease to have the status of a new bank, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks. Such bank shall thereafter be an insured national bank, without certification to or approval by the Corporation.

(17) Transfer to other institution

If the capital stock of the new bank is not offered for sale, or if an adequate amount of capital for such new bank is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new bank to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) Winding up

Unless the capital stock of the new bank is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such bank, after giving such notice, if any, as the Comp-

[5] See References in Text note below.

troller of the Currency may require, and shall certify to the Comptroller of the Currency the termination of the new bank. Thereafter the Corporation shall be liable for the obligations of such bank and shall be the owner of its assets.

(19) Applicability of certain laws

The provisions of sections 181 and 182 of this title shall not apply to a new bank under this subsection.

(n) Bridge banks

(1) Organization

(A) Purpose

When 1 or more insured banks are in default, or when the Corporation anticipates that 1 or more insured banks may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency shall charter, 1 or more national banks with respect thereto with the powers and attributes of national banking associations, subject to the provisions of this subsection, to be referred to as bridge banks.

(B) Authorities

Upon the granting of a charter to a bridge bank, the bridge bank may—

(i) assume such deposits of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate, except that if any insured deposits of a bank are assumed, all insured deposits of that bank shall be assumed by the bridge bank or another insured depository institution;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured bank or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this chapter.

(C) Articles of association

The articles of association and organization certificate of a bridge bank as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) Interim directors

A bridge bank shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) National bank

A bridge bank shall be organized as a national bank.

(2) Chartering

(A) Conditions

A national bank may be chartered by the Comptroller of the Currency as a bridge bank only if the Board of Directors determines that—

(i) the amount which is reasonably necessary to operate such bridge bank will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured banks in default or in danger of default with respect to which the bridge bank is chartered;

(ii) the continued operation of such insured bank or banks in default or in danger of default with respect to which the bridge bank is chartered is essential to provide adequate banking services in the community where each such bank in default or in danger of default is located; or

(iii) the continued operation of such insured bank or banks in default or in danger of default with respect to which the bridge bank is chartered is in the best interest of the depositors of such bank or banks in default or in danger of default or the public.

(B) Insured national bank

A bridge bank shall be an insured bank from the time it is chartered as a national bank.

(C) Bridge bank treated as being in default for certain purposes

A bridge bank shall be treated as an insured bank in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) Management

A bridge bank, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) Bylaws

The board of directors of a bridge bank shall adopt such bylaws as may be approved by the Corporation.

(3) Transfer of assets and liabilities

(A) In general

(i) Transfer upon grant of charter

Upon the granting of a charter to a bridge bank pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured bank in default with respect to which the bridge bank is chartered may transfer any assets and liabilities of such bank in default to the bridge bank in accordance with paragraph (1).

(ii) Subsequent transfers

At any time after a charter is granted to a bridge bank, the Corporation, as receiver, or any other receiver appointed with respect to an insured bank in default may transfer any assets and liabilities of

such insured bank in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) Treatment of trust business

For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured bank in default is included among its assets and liabilities.

(iv) Effective without approval

The transfer of any assets or liabilities, including those associated with any trust business, of an insured bank in default transferred to a bridge bank shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) Intent of Congress regarding continuing operations

It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured bank in default with respect to which a bridge bank is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

(i) continue to honor commitments made by the bank in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) Powers of bridge banks

Each bridge bank chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank, except that—

(A) the Corporation may—

(i) remove the interim directors and directors of a bridge bank;

(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge bank; and

(iii) waive any requirement established under section 71, 72, 73, 74, or 75 of this title (relating to directors of national banks) or section 71a of this title which would otherwise be applicable with respect to directors of a bridge bank by operation of paragraph (2)(B);

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge bank on such terms as the Corporation determines to be appropriate;

(C) no requirement under section 51[6] of this title or any other provision of law relating to the capital of a national bank shall apply with respect to a bridge bank;

(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge bank without regard to the amount of the bridge bank's capital or surplus;

(E)(i) the board of directors of a bridge bank shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and

(ii) the board of directors of a bridge bank may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) a bridge bank shall not be required to purchase stock of any Federal Reserve bank;

(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge bank at the request of the Corporation;

(H) any judicial action to which a bridge bank becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a bank in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge bank;

(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge bank in any asset of an insured bank in default acquired by it shall be valid against the bridge bank unless such agreement—

(i) is in writing,

(ii) was executed by such insured bank in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured bank in default,

(iii) was approved by the board of directors of such insured bank in default or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(iv) has been, continuously from the time of its execution, an official record of such insured bank in default;

(J) notwithstanding section 1823(e)(2) of this title, any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

(K) except with the prior approval of the Corporation, a bridge bank may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) Capital

(A) No capital required

The Corporation shall not be required to—

[6] See References in Text note below.

(i) issue any capital stock on behalf of a bridge bank chartered under this subsection; or

(ii) purchase any capital stock of a bridge bank, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge bank in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) Operating funds in lieu of capital

Upon the organization of a bridge bank, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge bank, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge bank in lieu of capital.

(C) Authority to issue capital stock

Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge bank to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(6) No Federal status

(A) Agency status

A bridge bank is not an agency, establishment, or instrumentality of the United States.

(B) Employee status

Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge bank are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a bridge bank shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5 or any other provision of law, or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge bank in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) Assistance authorized

The Corporation may, in its discretion, provide assistance under section 1823(c) of this title to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge bank in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured bank in default, or to facilitate a bridge bank's acquisition of any assets or the assumption of any liabilities of an insured bank in default.

(8) Acquisition

(A) In general

The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge bank requiring approval under section 1828(c) of this title and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the banks involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) By out-of-State holding company

Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge bank if the bridge bank at any time had assets aggregating $500,000,000 or more, as determined by the Corporation on the basis of the bridge bank's reports of condition or on the basis of the last available reports of condition of any insured bank in default, which institution has been acquired, or whose assets have been acquired, by the bridge bank. The acquiring entity may acquire the bridge bank only in the same manner and to the same extent as such entity may acquire an insured bank in default under section 1823(f)(2) of this title.

(9) Duration of bridge bank

Subject to paragraphs (11) and (12), the status of a bridge bank as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge bank as such for 3 additional 1-year periods.

(10) Termination of bridge bank status

The status of any bridge bank as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge bank with a depository institution that is not a bridge bank;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge bank to an entity other than the Corporation and other than another bridge bank;

(C) the sale of 80 percent, or more, of the capital stock of the bridge bank to an entity other than the Corporation and other than another bridge bank;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge bank by a depository institution holding company or a depository institution that is not a bridge bank, or the acquisition of all or substantially all of the assets of the

bridge bank by a depository institution holding company, a depository institution that is not a bridge bank, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge bank as provided in paragraph (12).

(11) Effect of termination events

(A) Merger or consolidation

A bridge bank that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) Charter conversion

Following the sale of a majority of the capital stock of the bridge bank as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge bank to reflect the termination of the status of the bridge bank as such, whereupon the bank shall remain a national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) Sale of stock

Following the sale of 80 percent or more of the capital stock of a bridge bank as provided in paragraph (10)(C), the bank shall remain a national bank, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) Assumption of liabilities and sale of assets

Following the assumption of all or substantially all of the liabilities of the bridge bank, or the sale of all or substantially all of the assets of the bridge bank, as provided in paragraph (10)(D), at the election of the Corporation the bridge bank may retain its status as such for the period provided in paragraph (9).

(E) Effect on holding companies

A depository institution holding company acquiring a bridge bank under section 1823(f) of this title, paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge bank as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 1823(f) of this title.

(F) Amendments to charter

Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge bank status, if appropriate.

(12) Dissolution of bridge bank

(A) In general

Notwithstanding any other provision of State or Federal law, if the bridge bank's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)—

(i) the Board of Directors may, in its discretion, dissolve a bridge bank in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge bank was chartered, or any extension thereof, as provided in paragraph (9).

(B) Procedures

The Comptroller of the Currency shall appoint the Corporation receiver for a bridge bank upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge bank. The Corporation as such receiver shall wind up the affairs of the bridge bank in conformity with the provisions of law relating to the liquidation of closed national banks. With respect to any such bridge bank, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(13) Multiple bridge banks

Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge banks under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single bank in default.

(*o*) Supervisory records

In addition to the requirements of section 1817(a)(2) of this title to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) Certain sales of assets prohibited

(1) Persons who engaged in improper conduct with, or caused losses to, depository institutions

The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed $1,000,000, to such failed institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) Convicted debtors

Except as provided in paragraph (3), any person who—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008,[7] 1014, 1032, 1341, 1343, or 1344 of title 18 or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, any deposit insurance fund, the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,

may not purchase any asset of such institution from the conservator or receiver.

(3) Settlement of claims

Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any insured depository institution, the FSLIC Resolution Fund, the Resolution Trust Corporation, or the Corporation.

(4) "Default" defined

For purposes of this subsection, the term ''default'' means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(q) Expedited procedures for certain claims

(1) Time for filing notice of appeal

The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) Scheduling

Consistent with section 1657 of title 18,[8] a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) Judicial discretion

The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(r) Foreign investigations

The Corporation and the Resolution Trust Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 1818(v) of this title; and

(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(s) Prohibition on entering secrecy agreements and protective orders

The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.

(t) Agencies may share information without waiving privilege

(1) In general

A covered agency shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any other covered agency, in any capacity; or

(B) any other agency of the Federal Government (as defined in section 6 of title 18).

[7] See References in Text note below.

[8] So in original. Probably should be ''title 28,''.

(2) Definitions

For purposes of this subsection:

(A) Covered agency

The term ''covered agency'' means any of the following:

(i) Any appropriate Federal banking agency.

(ii) The Resolution Trust Corporation.

(iii) The Farm Credit Administration.

(iv) The Farm Credit System Insurance Corporation.

(v) The National Credit Union Administration.

(vi) The General Accounting Office.

(B) Privilege

The term ''privilege'' includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

(3) Rule of construction

Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

(u) Purchase rights of tenants

(1) Notice

Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) Preference

In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

(B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) Exceptions

Paragraphs (1) and (2) shall not apply to—

(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;

(B) any eligible single family property (as such term is defined in section 1831q(p) of this title; or

(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.

(v) Preference for sales for homeless families

Subject to subsection (u) of this section, in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 1831q(p) of this title) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 11302 of title 42) or homeless families.

(w) Preferences for sales of certain commercial real properties

(1) Authority

In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

(A) that is made by a public agency or nonprofit organization; and

(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 11302 of title 42) or homeless families.

(2) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Eligible commercial real property

The term ''eligible commercial real property'' means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

(B) Nonprofit organization and public agency

The terms ''nonprofit organization'' and ''public agency'' have the same meanings as in section 1831q(p) of this title.

(Sept. 21, 1950, ch. 967, § 2[11], 64 Stat. 884; Pub. L. 89–695, title III, § 301(c), (d), Oct. 16, 1966, 80 Stat. 1055; Pub. L. 91–151, title I, § 7(a)(3), (4), Dec. 23, 1969, 83 Stat. 375; Pub. L. 93–495, title I, §§ 101(a)(3), 102(a)(3), (4), Oct. 28, 1974, 88 Stat. 1500, 1502; Pub. L. 95–369, § 6(c)(17)–(22), Sept. 17, 1978, 92 Stat. 619; Pub. L. 95–630, title XIV, § 1401(a), Nov. 10, 1978, 92 Stat. 3712; Pub. L. 96–153, title III, § 323(a), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96–221, title III, § 308(a)(1)(C), (D), Mar. 31, 1980, 94 Stat. 147; Pub. L. 97–110, title I, § 103(c), Dec. 26, 1981, 95 Stat. 1514; Pub. L. 97–320, title I, § 113(j), (k), Oct. 15, 1982, 96 Stat. 1474;

Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–86, title V, §§ 503(a), 507, Aug. 10, 1987, 101 Stat. 629, 634; Pub. L. 101–73, title II, §§ 201(a), 211–214, title IX, § 909, Aug. 9, 1989, 103 Stat. 187, 218–246, 477; Pub. L. 101–647, title XXV, §§ 2521(a)(1), 2526(a), 2527(a), 2528(a), 2532(b), 2534(a), Nov. 29, 1990, 104 Stat. 4863, 4875, 4877, 4880, 4882; Pub. L. 102–233, title I, § 102, title II, § 202(a), (b), title III, § 302(a), Dec. 12, 1991, 105 Stat. 1761, 1766, 1767; Pub. L. 102–242, title I, §§ 123(a), 133(a), (e), 141(b), (d), 161(a), (e), title II, § 241(c)(1), title III, § 311(a)(1), (b)(1), (2), (5)(B), (C), title IV, §§ 416, 426, 446, Dec. 19, 1991, 105 Stat. 2252, 2270, 2272, 2277, 2285, 2286, 2331, 2363, 2364, 2366, 2376, 2378, 2382; Pub. L. 102–550, title XV, §§ 1501(a), 1544, title XVI, §§ 1603(e)(1), 1604(c)(2), 1606(c), 1611(b), Oct. 28, 1992, 106 Stat. 4044, 4069, 4081, 4083, 4088, 4090; Pub. L. 103–66, title III, § 3001(a), (b), Aug. 10, 1993, 107 Stat. 336; Pub. L. 103–204, §§ 3(d), 4(b), 8(a)–(f), (i), 11, 15(b), 16(b), 17(b), 20, 27(b), 38(b), Dec. 17, 1993, 107 Stat. 2379, 2380, 2384–2389, 2399–2401, 2404, 2410, 2416; Pub. L. 103–325, title III, § 325, title IV, § 411(c)(2)(A), title VI, § 602(a)(21)–(33), Sept. 23, 1994, 108 Stat. 2228, 2253, 2289; Pub. L. 103–328, title II, § 201(a), Sept. 29, 1994, 108 Stat. 2368; Pub. L. 103–394, title V, § 501(c)(2), Oct. 22, 1994, 108 Stat. 4143; Pub. L. 104–208, div. A, title II, §§ 2602, 2704(d)(1)–(3), (6)(C), (14)(H), (I), 2705, Sept. 30, 1996, 110 Stat. 3009–469, 3009–487, 3009–488, 3009–492, 3009–495; Pub. L. 104–316, title I, § 106(i), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 106–102, title I, § 117, title VII, § 736(a), (b)(2), Nov. 12, 1999, 113 Stat. 1372, 1479; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–569, title XII, § 1222, Dec. 27, 2000, 114 Stat. 3036.)

References in Text

The date of the termination of the Resolution Trust Corporation, referred to in subsec. (a)(6)(F), is provided for in section 1441a(m) of this title.

Section 1441a(b)(4) of this title, referred to in subsec. (d)(2)(I)(ii), was in the original ''section 21A(b)(4)'', which has been translated as reading ''section 21A(b)(4) of the Federal Home Loan Bank Act'', to reflect the probable intent of Congress.

Section 1823(e)(2) of this title, referred to in subsec. (d)(9)(B), was redesignated section 1823(e)(1)(B) of this title by Pub. L. 103–325, title III, § 317(1), Sept. 23, 1994, 108 Stat. 2223.

The Federal Rules of Civil Procedure, referred to in subsec. (d)(18), (19), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 51 of this title, referred to in subsecs. (m)(15)(A) and (n)(4)(C), was repealed by Pub. L. 106–569, title XII, § 1233(c), Dec. 27, 2000, 114 Stat. 3037.

Section 1008 of title 18, referred to in subsec. (p)(2)(A), was repealed by Pub. L. 101–73, title IX, § 961(g)(1), Aug. 9, 1989, 103 Stat. 500.

Prior Provisions

Section is derived from subsec. (*l*) of former section 264 of this title. See Codification note set out under section 1811 of this title.

Amendments

2000—Subsec. (d)(10)(C). Pub. L. 106–569 added subpar. (C).

Subsecs. (v), (w)(1)(B)(ii). Pub. L. 106–400 made technical amendment to references in original act which appear in text as references to section 11302 of title 42.

1999—Subsec. (a)(4)(B). Pub. L. 106–102, § 117, substituted ''to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this chapter) of'' for ''to benefit any shareholder of'' in introductory provisions.

Subsec. (a)(5). Pub. L. 106–102, § 736(b)(2), amended Pub. L. 104–208, § 2704(d)(4), (6)(C). See 1996 Amendment notes below.

Subsec. (a)(6). Pub. L. 106–102, § 736(b)(2)(B), amended Pub. L. 104–208, § 2704(d)(6)(C)(i). See 1996 Amendment note below.

Subsec. (a)(6)(L). Pub. L. 106–102, § 736(a), struck out heading and text of subpar. (L). Text read as follows:

''(i) ESTABLISHMENT.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, there is established a Special Reserve of the Savings Association Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 1823(a) of this title.

''(ii) AMOUNTS IN SPECIAL RESERVE.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which the reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Savings Association Insurance Fund established by clause (i).

''(iii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve of the Savings Association Insurance Fund.

''(iv) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding clause (iii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve of the Savings Association Insurance Fund to the Savings Association Insurance Fund for the purposes set forth in paragraph (4), only if—

''(I) the reserve ratio of the Savings Association Insurance Fund is less than 50 percent of the designated reserve ratio; and

''(II) the Corporation expects the reserve ratio of the Savings Association Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

''(v) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve of the Savings Association Insurance Fund shall be excluded in calculating the reserve ratio of the Savings Association Insurance Fund.''

Subsec. (a)(7), (8). Pub. L. 106–102, § 736(b)(2)(B), (C), amended Pub. L. 104–208, § 2704(d)(6)(C). See 1996 Amendment notes below.

1996—Subsec. (a)(4). Pub. L. 104–208, § 2704(d)(1)(C), which directed substitution of ''Establishment of the Deposit Insurance Fund'' for ''General provisions relating to funds'' in heading, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (a)(4)(A) to (C). Pub. L. 104–208, § 2704(d)(1)(A), (B), (2), which directed striking out subpar. (A), redesignating subpar. (B) as (C) and substituting ''Deposit Insurance Fund'' for ''Bank Insurance Fund and the Savings Association Insurance Fund'' in introductory provisions, and adding new subpars. (A) and (B), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (a)(4)(D). Pub. L. 104–208, § 2704(d)(3), which directed adding subpar. (D), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (a)(5). Pub. L. 104–208, § 2704(d)(6)(C), as amended by Pub. L. 106–102, § 736(b)(2)(B), (C), which directed striking out par. (5) and redesignating par. (8) as (5), was not executed. See Effective Date of 1996 Amendment note below.

Pub. L. 104–208, § 2704(d)(4), which directed general amendment of par. (5), was repealed by Pub. L. 106–102, § 736(b)(2)(A).

Subsec. (a)(6). Pub. L. 104–208, § 2704(d)(6)(C)(i), as amended by Pub. L. 106–102, § 736(b)(2)(B), which directed striking out par. (6), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (a)(6)(L). Pub. L. 104–208, § 2705, added subpar. (L).

Subsec. (a)(7), (8). Pub. L. 104–208, § 2704(d)(6)(C), as amended by Pub. L. 106–102, § 736(b)(2)(B), (C), which directed striking out par. (7) and redesignating par. (8) as (5), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d)(20). Pub. L. 104–208, § 2602, added par. (20).

Subsec. (f)(1). Pub. L. 104–208, § 2704(d)(14)(H), which directed substitution of a period for '', except that—'' and subpars. (A) and (B), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (i)(3). Pub. L. 104–208, § 2704(d)(14)(I), which directed striking out subpar. (B) and redesignating subpar. (C) as (B) and substituting ''subparagraph (A)'' for ''subparagraphs (A) and (B)'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (t)(2)(A)(vi). Pub. L. 104–316 added cl. (vi).

1994—Subsec. (a)(4). Pub. L. 103–325, § 602(a)(21), substituted ''PROVISIONS'' for ''PROVISIONS'' in heading.

Subsec. (c)(5)(M). Pub. L. 103–325, § 411(c)(2)(A), substituted ''section 5322 or 5324 of title 31'' for ''section 5322 of title 31''.

Subsec. (d)(2)(B)(iii). Pub. L. 103–325, § 602(a)(22), substituted ''are consistent'' for ''is consistent''.

Subsec. (d)(8)(B)(ii). Pub. L. 103–325, § 602(a)(23), inserted ''provide'' before ''a statement''.

Subsec. (d)(14)(B). Pub. L. 103–325, § 602(a)(24), substituted ''statute of limitations'' for ''statute of limitation''.

Subsec. (d)(14)(C). Pub. L. 103–328 added subpar. (C).

Subsec. (d)(16)(B)(iv). Pub. L. 103–325, § 602(a)(25), substituted ''disposition'' for ''dispositions''.

Subsec. (e)(8)(D). Pub. L. 103–394 substituted ''section 741'' for ''section 741(7)'' in cl. (ii)(I), ''section 761'' for ''section 761(4)'' in cl. (iii), ''section 101'' for ''section 101(24)'' in cl. (iv), ''section 101'' for ''section 101(41)'' in cl. (v)(I), and ''section 101'' for ''section 101(50)'' in cl. (viii).

Subsec. (e)(8)(D)(v)(I). Pub. L. 103–325, § 602(a)(26), substituted ''title 15),'' for ''title 15,''.

Subsec. (e)(12)(B). Pub. L. 103–325, § 602(a)(27), substituted ''director's or officer's'' for ''directors or officers''.

Subsec. (e)(14), (15). Pub. L. 103–325, § 325, added pars. (14) and (15).

Subsec. (f)(3)(A). Pub. L. 103–325, § 602(a)(28), substituted ''WITH'' for ''TO'' in heading.

Subsec. (i)(3)(A). Pub. L. 103–325, § 602(a)(29), substituted ''other claimant or category of claimants'' for ''other claimant or category or claimants'' in second sentence.

Subsec. (n)(4)(E)(i). Pub. L. 103–325, § 602(a)(30), inserted ''and'' at end.

Subsec. (n)(12)(A). Pub. L. 103–325, § 602(a)(31), substituted ''subparagraph'' for ''subparagraphs''.

Subsec. (q)(1). Pub. L. 103–325, § 602(a)(32), substituted ''held'' for ''decided'' in second sentence.

Subsec. (u)(3)(B). Pub. L. 103–325, § 602(a)(33), substituted ''section 1831q(p) of this title'' for ''subsection (c)(9)''.

1993—Subsec. (a)(1)(C). Pub. L. 103–204, § 38(b), substituted ''paragraph (1) or (2) of section 1817(i) of this title or any funds described in section 1817(i)(3) of this title'' for ''section 1817(i)(1) of this title''.

Subsec. (a)(4). Pub. L. 103–204, § 11, substituted ''PROVISIONS'' for ''PROVISION'' in heading, and amended text generally. Prior to amendment, text read as follows: ''The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

''(A) maintained and administered by the Corporation;

''(B) maintained separately and not commingled; and

''(C) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.''

Subsec. (a)(6)(D) to (F). Pub. L. 103–204, § 8(a)–(c), amended subpars. (D) to (F) generally. Prior to amendment, subpars. (D) to (F) related to the availability of funds for administrative expenses, Treasury payments to the Fund, and Treasury payments to maintain the net worth of the Fund, respectively.

Subsec. (a)(6)(G). Pub. L. 103–204, § 8(i), substituted ''subparagraph (D)'' for ''subparagraphs (E) and (F)'' in heading and text.

Subsec. (a)(6)(H). Pub. L. 103–204, § 8(d), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''DISCRETIONARY RTC PAYMENTS.—If amounts available to the Savings Association Insurance Fund for purposes other than the payment of administrative expenses are insufficient for the Savings Association Insurance Fund to carry out the purposes of this chapter, the Corporation may request the Resolution Trust Corporation to provide, and the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation (in the discretion of the Thrift Depositor Protection Oversight Board) may pay, such amount as may be needed for such purposes.''

Subsec. (a)(6)(J). Pub. L. 103–204, § 8(e), substituted ''Subject to subparagraph (E), there are'' for ''There are'' and ''of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed $8,000,000,000.'' for ''of this paragraph, except that—

''(i) the annual amount appropriated under subparagraph (F) shall not exceed $2,000,000,000 in either fiscal year 1992 or fiscal year 1993; and

''(ii) the cumulative amount appropriated under subparagraph (F) for fiscal years 1992 through 2000 shall not exceed $16,000,000,000.''

Subsec. (a)(6)(K). Pub. L. 103–204, § 8(f), added subpar. (K).

Subsec. (c)(6)(B)(i). Pub. L. 103–204, § 27(b)(1), substituted ''such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title'' for ''October 1, 1993''.

Subsec. (c)(6)(B)(ii). Pub. L. 103–204, § 27(b)(2), (3), substituted ''on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title'' for ''after September 30, 1993'' and ''before such date'' for ''on or before such date''.

Subsec. (c)(6)(B)(iii). Pub. L. 103–204, § 27(b)(2), substituted ''on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title'' for ''after September 30, 1993''.

Subsec. (c)(13). Pub. L. 103–66, § 3001(b)(1), in subpar. (A) struck out ''subject to subparagraph (B),'' before ''this section shall'' and inserted ''and'' at end, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''the Corporation shall apply the law of the State in which the institution is chartered insofar as that law gives the claims of depositors priority over those of other creditors or claimants; and''.

Subsec. (d)(2)(K). Pub. L. 103–204, § 3(d), inserted ''legal,'' after ''auction marketing,'' and substituted ''only if'' for ''if'' and ''the most practicable'' for ''practicable''.

Subsec. (d)(11). Pub. L. 103–66, § 3001(a), amended par. (11) generally, substituting present provisions for former provisions relating to distribution of assets, which consisted of a subpar. (A) relating to subrogated claims and claims of uninsured depositors and other creditors and a subpar. (B) relating to distribution to shareholders of amounts remaining after payment of all other claims and expenses.

Subsec. (d)(14)(A)(ii). Pub. L. 103–204, 4(b), inserted ''(other than a claim which is subject to section 1441a(b)(14) of this title)'' after ''any tort claim''.

Subsec. (g)(4). Pub. L. 103–66, § 3001(b)(2), substituted ''Subject to subsection (d)(11) of this section, if'' for ''If''.

Subsec. (p). Pub. L. 103–204, § 20, in heading, substituted ''CERTAIN SALES OF ASSETS PROHIBITED'' for ''CERTAIN CONVICTED DEBTORS PROHIBITED FROM PURCHASING ASSETS'', added par. (1), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, in par.

(2) substituted ''paragraph (3)'' for ''paragraph (2)'' and ''person'' for ''individual'', in par. (3) substituted ''Paragraphs (1) and (2)'' for ''Paragraph (1)'' and ''person'' for ''individual'', wherever appearing, and added par. (4).

Subsec. (u). Pub. L. 103–204, §15(b), added subsec. (u).

Subsec. (v). Pub. L. 103–204, §16(b), added subsec. (v).

Subsec. (w). Pub. L. 103–204, §17(b), added subsec. (w).

1992—Subsec. (c)(5)(M). Pub. L. 102–550, §1501(a), added subpar. (M).

Subsec. (c)(6)(B). Pub. L. 102–550, §1611(b)(2), substituted ''subparagraph (A) or (C) of section 1464(d)(2) of this title'' for ''subparagraph (C) or (F) of section 1464(d)(2) of this title''.

Pub. L. 102–550, §1611(b)(1), substituted ''subparagraph (C) or (F) of section 1464(d)(2) of this title'' for ''section 1464(d)(2)(C) of this title''.

Subsec. (d)(2)(B), (E). Pub. L. 102–550, §1604(c)(2), made technical amendment to reference to section 1831q of this title to reflect change in reference to corresponding section of original act.

Subsec. (d)(4)(A). Pub. L. 102–550, §1606(c), substituted ''determination'' for ''determinations'' after ''administrative''.

Subsec. (d)(5)(D)(iii)(I). Pub. L. 102–550, §1603(e)(1), substituted ''insured depository institution'' for ''institution described in paragraph (3)(A)''.

Subsec. (t). Pub. L. 102–550, §1544, added subsec. (t).

1991—Subsec. (a)(1). Pub. L. 102–242, §311(b)(1), added par. (1) and struck out former par. (1) which read as follows: ''The Corporation shall insure the deposits of all insured depository institutions as provided in this chapter. The maximum amount of the insured deposit of any depositor shall be $100,000.''

Subsec. (a)(2)(A). Pub. L. 102–242, §311(b)(5)(B), in closing provisions, substituted ''such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed $100,000 per account'' for ''his deposit shall be insured'' before ''in an amount not to exceed $100,000 per account.''

Subsec. (a)(2)(B). Pub. L. 102–242, §311(b)(5)(C), substituted ''(B)'' for ''(b)'' as subpar. designation.

Subsec. (a)(3). Pub. L. 102–242, §311(b)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, time and savings deposits in an insured depository institution made pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, or made in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of $100,000 per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term 'per account' means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.''

Subsec. (a)(6)(E). Pub. L. 102–233, §202(a), substituted ''1993'' for ''1992'' and ''2000'' for ''1999''.

Subsec. (a)(6)(J). Pub. L. 102–233, §202(b), substituted ''1992'' for ''1991'' and ''1993'' for ''1992'' in cl. (i), and ''1992'' for ''1991'' and ''2000'' for ''1999'' in cl. (ii).

Subsec. (a)(8). Pub. L. 102–242, §311(a)(1), added par. (8).

Subsec. (c)(5). Pub. L. 102–242, §133(a), amended par. (5) generally, revising and restating as subpars. (A) to (L) provisions of former subpars. (A) to (H).

Subsec. (c)(6)(B). Pub. L. 102–233, §102, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of section 1464(d)(2)(C) of this title for the purpose of liquidation or winding up any savings association's affairs—

''(i) during the 3-year period beginning on August 9, 1989, the Resolution Trust Corporation shall be appointed; and

''(ii) after the end of the 3-year period referred to in clause (i), the Corporation shall be appointed.''

Subsec. (c)(9). Pub. L. 102–242, §133(e), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''In any case in which the Corporation is appointed conservator or receiver pursuant to paragraph (4) or (6)—

''(A) the provisions of this section shall be applicable to the Corporation, as conservator or receiver of any insured State depository institution in the same manner and to the same extent as if such institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

''(B) the Corporation as receiver of any insured State depository institution may—

''(i) liquidate such institution in an orderly manner; and

''(ii) make such other disposition of any matter concerning such institution as the Corporation determines is in the best interests of the institution, the depositors of such institution, and the Corporation.''

Subsec. (c)(10) to (13). Pub. L. 102–242, §133(e), added pars. (10) to (13).

Subsec. (d)(2)(B). Pub. L. 102–242, §241(c)(1)(A), inserted ''(subject to the provisions of section 1831q of this title)'' before comma in introductory provisions.

Subsec. (d)(2)(E). Pub. L. 102–242, §241(c)(1)(B), inserted ''(subject to the provisions of section 1831q of this title)'' before first comma.

Subsec. (d)(2)(K). Pub. L. 102–242, §426, added subpar. (K).

Subsec. (d)(3)(A). Pub. L. 102–242, §161(a)(1), substituted ''paragraph (4)'' for ''paragraph (4)(A)''.

Subsec. (d)(4). Pub. L. 102–242, §416, amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.''

Subsec. (d)(5)(D). Pub. L. 102–242, §141(b), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.''

Subsec. (d)(11)(B). Pub. L. 102–242, §161(a)(2), substituted ''paragraph (15)(B)'' for ''paragraph (14)(C)''.

Subsec. (d)(13)(E). Pub. L. 102–242, §123(a), added subpar. (E).

Subsec. (e)(3)(C)(ii), (4)(B)(iii). Pub. L. 102–242, §161(a)(3), (4), substituted ''subsection (i)'' for ''subsection (k)''.

Subsec. (e)(8)(A), (E). Pub. L. 102–242, §161(a)(5), substituted ''subsection (d)(9) of this section'' for ''subsections (d)(9) and (i)(4)(I) of this section''.

Subsec. (h). Pub. L. 102–242, §141(d)(2), substituted ''RESOLUTION'' for ''LIQUIDATION'' in heading.

Subsec. (h)(4). Pub. L. 102–242, §141(d)(1), added par. (4).

Subsec. (i)(3)(A). Pub. L. 102–242, §161(e), substituted ''Notwithstanding any other provision of Federal or State law, or the constitution of any State, the'' for ''The''.

Subsec. (n)(9). Pub. L. 102–242, §161(a)(6), substituted ''paragraphs (11) and (12)'' for ''paragraphs (11) and (13)''.

Subsec. (n)(11)(D). Pub. L. 102–242, §161(a)(7), substituted ''paragraph (9)'' for ''paragraph (8)''.

Subsec. (s). Pub. L. 102–242, §446, added subsec. (s).

1990—Subsec. (d)(2)(I), (J). Pub. L. 101–647, §2534(a), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (d)(17). Pub. L. 101–647, §2528(a), added par. (17).

Subsec. (d)(18), (19). Pub. L. 101–647, §2521(a)(1), added pars. (18) and (19).

Subsec. (p). Pub. L. 101–647, § 2526(a), added subsec. (p).
Subsec. (q). Pub. L. 101–647, § 2527, added subsec. (q).
Subsec. (r). Pub. L. 101–647, § 2532(b), added subsec. (r).

1989—Subsec. (a)(1). Pub. L. 101–73, § 211(1), added par. (1) and struck out former par. (1) which read as follows: ''The Temporary Federal Deposit Insurance Fund and the Fund for Mutuals heretofore created pursuant to the provisions of section 12B of the Federal Reserve Act, as amended, are consolidated into a Permanent Insurance Fund for insuring deposits, and the assets therein shall be held by the Corporation for the uses and purposes of the Corporation: *Provided*, That the obligations to and rights of the Corporation, depositors, banks, and other persons arising out of any event or transaction prior to September 21, 1950, shall remain unimpaired. On and after August 23, 1935, the Corporation shall insure the deposits of all insured banks as provided in this chapter: *Provided further*, That the insurance shall apply only to deposits of insured banks which have been made available since March 10, 1933, for withdrawal in the usual course of the banking business: *Provided further*, That if any insured bank shall, without the consent of the Corporation, release or modify restrictions on or deferments of deposits which had not been made available for withdrawal in the usual course of the banking business on or before August 23, 1935, such deposits shall not be insured. Except as provided in paragraph (2), the maximum amount of the insured deposit of any depositor shall be $100,000.''

Subsec. (a)(2)(A). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (a)(2)(B). Pub. L. 101–73, § 211(2), struck out ''time and savings'' after ''deposited in''.

Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (a)(3). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (a)(4) to (7). Pub. L. 101–73, § 211(3), added pars. (4) to (7).

Subsec. (b). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (c). Pub. L. 101–73, § 212(a), added subsec. (c) and struck out former subsec. (c) which related to Corporation as receiver.

Subsec. (d). Pub. L. 101–73, § 212(a), added subsec. (d) and struck out former subsec. (d) which related to powers and duties of Corporation as receiver.

Subsec. (e). Pub. L. 101–73, § 212(a), added subsec. (e) and struck out former subsec. (e) which related to Corporation as receiver of State banks.

Subsec. (f). Pub. L. 101–73, § 212(a), added subsec. (f) and struck out former subsec. (f) which related to payment of insured deposits of closed insured bank or insured branch of a foreign bank.

Subsec. (g). Pub. L. 101–73, § 212(a), added subsec. (g) and struck out former subsec. (g) which related to subrogation rights of Corporation in the case of a closed national bank, insured branch of a foreign bank, District bank, or closed insured Federal savings bank.

Subsec. (h). Pub. L. 101–73, § 212(a), added subsec. (h) and struck out former subsec. (h) which related to organization, etc., of new national banks upon closing of insured banks. See subsec. (m) of this section.

Subsec. (i). Pub. L. 101–73, § 212(a), added subsec. (i) and struck out former subsec. (i) which related to establishment, etc., of bridge banks. See subsec. (n) of this section.

Subsec. (j). Pub. L. 101–73, § 212(a), added subsec. (j) and struck out former subsec. (j) which related to conditions applicable to liquidation proceedings.

Subsecs. (k), (*l*). Pub. L. 101–73, § 212(a), added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 101–73, § 213, added subsec. (m).

Subsec. (n). Pub. L. 101–73, § 214, added subsec. (n).

Subsec. (*o*). Pub. L. 101–73, § 909, added subsec. (*o*).

1987—Subsec. (h). Pub. L. 100–86, § 503(a)(1), (2), designated existing provisions as par. (1) and redesignated former subsecs. (i) to (*l*) as pars. (2) to (5), respectively.

Subsec. (i). Pub. L. 100–86, § 503(a)(2), (3), added subsec. (i). Former subsec. (i) redesignated subsec. (h)(2) of this section.

Subsec. (j). Pub. L. 100–86, §§ 503(a)(2), 507, added subsec. (j). Former subsec. (j) redesignated subsec. (h)(3) of this section.

Subsecs. (k), (*l*). Pub. L. 100–86, § 503(a)(2), redesignated subsecs. (k) and (*l*) as pars. (4) and (5), respectively, of subsec. (h).

1986—Subsec. (a)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1982—Subsec. (c). Pub. L. 97–320, § 113(j), inserted provision relating to appointment of Corporation as receiver for an insured Federal savings bank by Federal Home Loan Bank Board.

Subsec. (g). Pub. L. 97–320, § 113(k), inserted ''or closed insured Federal savings bank,'' after ''foreign bank, or District bank,''.

1981—Subsec. (a)(2)(A)(iv). Pub. L. 97–110 inserted ''the Trust Territory of the Pacific Islands,'' after ''Virgin Islands, American Samoa,'' and ''of the Trust Territory of the Pacific Islands,'' after ''of American Samoa,''.

1980—Subsec. (a)(1). Pub. L. 96–221, § 308(a)(1)(C), substituted ''$100,000'' for ''$40,000''.

Subsec. (i). Pub. L. 96–221, § 308(a)(1)(D), substituted ''$100,000'' for ''$40,000''.

1979—Subsec. (a)(2)(A)(v). Pub. L. 96–153 added cl. (v).

1978—Subsec. (a)(3). Pub. L. 95–630 added par. (3).

Subsec. (c). Pub. L. 95–369, § 6(c)(17), inserted ''insured Federal branch of a foreign bank'' after ''any insured national bank''.

Subsec. (e). Pub. L. 95–369, § 6(c)(18), (19), inserted ''or any insured branch (other than a Federal branch) of a foreign bank'' after ''(except a District bank)'', and substituted ''such insured State bank or insured branch of a foreign bank'' for ''such insured State bank''.

Subsec. (f). Pub. L. 95–369, § 6(c)(20), inserted ''or insured branch of a foreign bank'' after ''Whenever an insured bank''.

Subsec. (g). Pub. L. 95–369, § 6(c)(21), (22), inserted ''insured branch of a foreign bank'' after ''In the case of a closed national bank'', and substituted ''In the case of any closed insured bank or closed insured branch of a foreign bank, such subrogation'' for ''In the case of any closed insured bank, such subrogation''.

1974—Subsec. (a). Pub. L. 93–495, §§ 101(a)(3), 102(a)(3), redesignated existing provisions as par. (1), inserted exception relating to applicability of par. (2), substituted ''$40,000'' for ''$20,000', and added par. (2).

Subsec. (i). Pub. L. 93–495, § 102(a)(4), substituted ''$40,000'' for ''$20,000''.

1969—Subsec. (a). Pub. L. 91–151, § 7(a)(3), substituted $20,000 for $15,000 in last sentence.

Subsec. (i). Pub. L. 91–151, § 7(a)(4), substituted $20,000 for $15,000 in fifth sentence.

1966—Subsec. (a). Pub. L. 89–695, § 301(c), substituted in last sentence ''$15,000'' for ''$10,000'' and struck out '': *And provided further*, That in the case of banks closing prior to September 21, 1950, the maximum amount of the insured deposit of any depositor shall be $5,000''.

Subsec. (i). Pub. L. 89–695, § 301(d), substituted ''$15,000'' for ''$10,000'' in fifth sentence.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see sec-

tion 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 117 of Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

Pub. L. 106–102, title VII, §736(c), Nov. 12, 1999, 113 Stat. 1479, provided that: ''This section [amending this section and provisions set out as a note under this section] and the amendments made by this section shall become effective on the date of the enactment of this Act [Nov. 12, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 2704(c) of div. A of Pub. L. 104–208 provided that: ''This section [amending this section and sections 24, 338a, 347b, 1431, 1441a, 1441b, 1464, 1467a, 1723i, 1735f–14, 1813, 1815 to 1817, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831*o*, 1833a, 1834, 1841, and 3341 of this title and section 905 of Title 2, The Congress, repealing section 1831h of this title, and enacting provisions set out as notes under this section] and the amendments made by this section shall become effective on January 1, 1999, if no insured depository institution is a savings association on that date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3001(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply with respect to insured depository institutions for which a receiver is appointed after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1501(a) of Pub. L. 102–550 effective Dec. 20, 1992, see section 1501(c) of Pub. L. 102–550, set out as a note under section 1786 of this title.

Amendment by sections 1603(e)(1), 1604(c)(2), and 1606(c) of Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

Section 1611(b)(2) of Pub. L. 102–550 provided that the amendment made by that section is effective one year after Dec. 19, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 133(a), (e) of Pub. L. 102–242 effective 1 year after Dec. 19, 1991, see section 133(g) of Pub. L. 102–242, set out as a note under section 191 of this title.

Section 311(c) of Pub. L. 102–242 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) and paragraphs (2) and (3) of subsection (b) [amending this section and section 1817 of this title] shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act [Dec. 19, 1991].

''(2) APPLICATION TO TIME DEPOSITS.—

''(A) CERTAIN DEPOSITS EXCLUDED.—Except with respect to the amendment referred to in paragraph (3), the amendments made by subsections (a) and (b) [amending this section and sections 1813 and 1817 of this title] shall not apply to any time deposit which—

''(i) was made before the date of enactment of this Act [Dec. 19, 1991]; and

''(ii) matures after the end of the 2-year period referred to in paragraph (1).

''(B) ROLLOVERS AND RENEWALS TREATED AS NEW DEPOSIT.—Any renewal or rollover of a time deposit described in subparagraph (A) after the date of the enactment of this Act shall be treated as a new deposit which is not described in such subparagraph.

''(3) EFFECTIVE DATE FOR AMENDMENT RELATING TO CERTAIN EMPLOYEE PLANS.—

''(A) Section 11(a)(1)(B) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(1)(B)] (as amended by subsection (b)(1) of this section) shall take effect on the earlier of—

''(i) the date of the enactment of this Act [Dec. 19, 1991]; or

''(ii) January 1, 1992.

''(B) Section 11(a)(3)(A) of the Federal Deposit Insurance Act (as amended by subsection (b)(2) of this section) shall take effect on the earlier of the dates described in clauses (i) and (ii) of subparagraph (A) with respect to plans described in clause (ii) of such section.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective Mar. 31, 1980, see section 308(e) of Pub. L. 96–221, set out as a note under section 1817 of this title.

Amendment by section 308(a)(1) of Pub. L. 96–221 not applicable to any claim arising out of the closing of a bank prior to the effective date of section 308 of Pub L. 96–221, see section 308(a)(2) of Pub. L. 96–221, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–153 applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96–153, set out as an Effective and Termination Dates of 1979 Amendment note under section 1757 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–630 effective Nov. 10, 1978, see section 1402 of Pub. L. 95–630, set out as a note under section 1787 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 101(a)(3) and 102(a)(3), (4) of Pub. L. 93–495 effective on thirtieth day beginning after Oct. 28, 1974, and amendment by section 102(a)(3), (4) of Pub. L. 93–495 not applicable to any claim arising out of the closing of any bank prior to such effective date, see sections 101(g) and 102(a)(3), (4) of Pub. L. 93–495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–151 not applicable to any claim arising out of the closing of a bank where such closing took place prior to Dec. 23, 1969, see section 7(b) of Pub. L. 91–151, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–695 not applicable to any claim arising out of the closing of a bank where such closing is prior to Oct. 16, 1966, see section 301(e) of Pub. L. 89–695, set out as a note under section 1813 of this title.

REGULATIONS

Section 311(b)(4) of Pub. L. 102–242 provided that:

''(A) REVIEW OF COVERAGE.—For the purpose of prescribing regulations, during the 1-year period beginning on the date of the enactment of this Act [Dec. 19, 1991], the Board of Directors shall review the capacities and

rights in which deposit accounts are maintained and for which deposit insurance coverage is provided by the Corporation.

''(B) REGULATIONS.—After the end of the 1-year period referred to in subparagraph (A), the Board of Directors may prescribe regulations that provide for separate insurance coverage for the different capacities and rights in which deposit accounts are maintained if a determination is made by the Board of Directors that such separate insurance coverage is consistent with—

''(i) the purpose of protecting small depositors and limiting the undue expansion of deposit insurance coverage; and

''(ii) the insurance provisions of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

''(C) DELAYED EFFECTIVE DATE FOR REGULATIONS.—No regulation prescribed under subparagraph (B) may take effect before the 2-year period beginning on the date of the enactment of this Act [Dec. 19, 1991].''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

MERGER OF BIF AND SAIF

Pub. L. 104–208, div. A, title II, § 2704(a), (b), Sept. 30, 1996, 110 Stat. 3009–486, as amended by Pub. L. 106–102, title VII, § 736(b)(1), Nov. 12, 1999, 113 Stat. 1479, provided that the Bank Insurance Fund and the Savings Association Insurance Fund were to be merged into the Deposit Insurance Fund, that all assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund were to be transferred to the Deposit Insurance Fund, and that the separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund was to cease. See Effective Date of 1996 Amendment note above.

GAO REPORT

Section 8(g) of Pub. L. 103–204 provided that: ''Not later than 60 days after receipt of any certification submitted pursuant to subparagraph (E) or (F) of section 11(a)(6) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(6)], the Comptroller General shall transmit a report to the Congress evaluating any such certification.''

SINGLE AGENCY FOR REAL PROPERTY DISPOSITION

Section 26(b) of Pub. L. 103–204 provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and effectiveness of establishing a single Federal agency responsible for selling and otherwise disposing of real property owned or held by the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The study shall examine the real property disposition procedures of such agencies and corporations, analyze the feasibility of consolidating such procedures through such single agency, and determine the characteristics and authority necessary for any such single agency to efficiently carry out such disposition activities.

''(2) REPORT.—Not later than 12 months after the date of enactment of this Act [Dec. 17, 1993], the Comptroller General shall submit a report to the Congress on the study required under paragraph (1), which shall describe any findings under the study and contain any recommendations of the Comptroller General for the establishment of such single agency.''

EXEMPTIONS FOR CERTAIN TRANSACTIONS

Section 37 of Pub. L. 103–204 provided that:

''(a) TRANSACTIONS INVOLVING CERTAIN INSTITUTIONS.—Section 11(a)(4)(B) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(4)(B)] shall not prohibit assistance from the Bank Insurance Fund that otherwise meets all the criteria established in section 13(c) of such Act [12 U.S.C. 1823(c)] from being provided to an insured depository institution that became wholly-owned, either directly or through a wholly-owned subsidiary, by an entity or instrumentality of a State government during the period beginning on January 1, 1992, and ending on the date of enactment of this Act [Dec. 17, 1993].

''(b) TRANSACTIONS INVOLVING THE FDIC AS RECEIVER.—Notwithstanding the extension, pursuant to section 27 [12 U.S.C. 1831d], of the Resolution Trust Corporation's jurisdiction to be appointed conservator or receiver of certain savings associations after September 30, 1993, no provision of this Act [see Short Title of 1993 Amendment note set out under section 1421 of this title] or any amendment made by this Act shall invalidate or otherwise affect—

''(1) any appointment of the Federal Deposit Insurance Corporation as receiver for any savings association that became effective before the date of enactment of this Act; or

''(2) any action taken by the Federal Deposit Insurance Corporation as such receiver before, on, or after such date of enactment.''

INFORMATIONAL STUDY

Section 311(d) of Pub. L. 102–242 provided that:

''(1) IN GENERAL.—The Federal Deposit Insurance Corporation, in conjunction with such consultants and technical experts as the Corporation determines to be appropriate, shall conduct a study of the cost and feasibility of tracking the insured and uninsured deposits of any individual and the exposure, under any Act of Congress or any regulation of any appropriate Federal banking agency, of the Federal Government with respect to all insured depository institutions.

''(2) ANALYSIS OF COSTS AND BENEFITS.—The study under paragraph (1) shall include detailed, technical analysis of the costs and benefits associated with the least expensive way to implement the system.

''(3) SPECIFIC FACTORS TO BE STUDIED.—As part of the study under paragraph (1), the Corporation shall investigate, review, and evaluate—

''(A) the data systems that would be required to track deposits in all insured depository institutions;

''(B) the reporting burdens of such tracking on individual depository institutions;

''(C) the systems which exist or which would be required to be developed to aggregate such data on an accurate basis;

''(D) the implications such tracking would have for individual privacy; and

''(E) the manner in which systems would be administered and enforced.

''(4) FEDERAL RESERVE BOARD SURVEY.—As part of the informational study required under paragraph (1), the Board of Governors of the Federal Reserve System shall conduct, in conjunction with other Federal departments and agencies as necessary, a survey of the ownership of deposits held by individuals including the dollar amount of deposits held, the type of deposit accounts held, and the type of financial institutions in which the deposit accounts are held.

''(5) ANALYSIS BY FDIC.—The results of the survey under paragraph (4) shall be provided to the Federal Deposit Insurance Corporation before the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 19, 1991] for analysis and inclusion in the informational study.

''(6) REPORT TO CONGRESS.—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Federal Deposit Insurance Corporation shall submit to the Congress a report containing a detailed statement of findings made and conclusions drawn from the study conducted under this section, including such recommendations for administrative and legislative action as the Corporation determines to be appropriate.''

CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS

Section 451 of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, § 1606(g)(1), Oct. 28, 1992, 106 Stat. 4088, provided that:

''(a) CONTINUATION COVERAGE.—The Federal Deposit Insurance Corporation—

''(1) shall, in its capacity as a successor of a failed depository institution (whether acting directly or through any bridge bank), have the same obligation to provide a group health plan meeting the requirements of section 602 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1162] (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

''(2) shall require that any successor described in subsection (b)(1)(B)(iii) provide a group health plan with respect to former employees of such institution in the same manner as the failed depository institution would have been required to provide but for its failure.

''(b) DEFINITIONS.—For purposes of this section—

''(1) SUCCESSOR.—An entity is a successor of a failed depository institution during any period if—

''(A) such entity holds substantially all of the assets or liabilities of such institution, and

''(B) such entity is—

''(i) the Federal Deposit Insurance Corporation,

''(ii) any bridge bank, or

''(iii) an entity that acquires such assets or liabilities from the Federal Deposit Insurance Corporation or a bridge bank.

''(2) FAILED DEPOSITORY INSTITUTION.—The term 'failed depository institution' means any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)]) for which a receiver has been appointed.

''(3) BRIDGE BANK.—The term 'bridge bank' has the meaning given such term by section 3(i)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1812(i)(2)].

''(c) NO PREMIUM COSTS IMPOSED ON FDIC.—Subsection (a) shall not be construed as requiring the Federal Deposit Insurance Corporation to incur, by reason of this section, any obligation for any premium under any group health plan referred to in such subsection.

''(d) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1991], regardless of whether the qualifying event under section 603 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163] occurred before, on, or after such date.''

DEFINITIONS

Section 2710 of div. A of Pub. L. 104–208 provided that: ''For purposes of this subtitle [subtitle G (§§ 2701–2711) of title II of div. A of Pub. L. 104–208, see Short Title of 1996 Amendment note set out under section 1811 of this title], the following definitions shall apply:

''(1) BANK INSURANCE FUND.—The term 'Bank Insurance Fund' means the fund established pursuant to section (11)(a)(5)(A) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(5)(A)], as that section existed on the day before the date of enactment of this Act [Sept. 30, 1996].

''(2) BIF MEMBER, SAIF MEMBER.—The terms 'Bank Insurance Fund member' and 'Savings Association Insurance Fund member' have the same meanings as in section 7(*l*) of the Federal Deposit Insurance Act [12 U.S.C. 1817(*l*)].

''(3) VARIOUS BANKING TERMS.—The terms 'bank', 'Board of Directors', 'Corporation', 'deposit', 'insured depository institution', 'Federal savings association', 'savings association', 'State savings bank', and 'State depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(4) DEPOSIT INSURANCE FUND.—The term 'Deposit Insurance Fund' means the fund established under section 11(a)(4) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(4)] (as amended by section 2704(d) of this subtitle).

''(5) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term 'depository institution holding company' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(6) DESIGNATED RESERVE RATIO.—The term 'designated reserve ratio' has the same meaning as in section 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(2)(A)(iv)].

''(7) SAIF.—The term 'Savings Association Insurance Fund' means the fund established pursuant to section 11(a)(6)(A) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(6)(A)], as that section existed on the day before the date of enactment of this Act [Sept. 30, 1996].

''(8) SAIF-ASSESSABLE DEPOSIT.—The term 'SAIF-assessable deposit'—

''(A) means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] (including a deposit that is treated as insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)]); and

''(B) includes any deposit described in subparagraph (A) which is assumed after March 31, 1995, if the insured depository institution, the deposits of which are assumed, is not an insured depository institution when the special assessment is imposed under section 2702(a) [12 U.S.C. 1817 note].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 191, 197, 203, 248, 1441a, 1464, 1813, 1818, 1822, 1823, 1831r–1 of this title; title 11 section 783; title 15 section 6712; title 15 section 6712; title 18 section 1032; title 26 sections 414, 597.

§ 1821a. FSLIC Resolution Fund

(a) Established

(1) In general

There is established a separate fund to be designated as the FSLIC Resolution Fund which shall be managed by the Corporation and separately maintained and not commingled.

(2) Transfer of FSLIC assets and liabilities

(A) In general

Except as provided in section 1441a of this title, all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the day before August 9, 1989, shall be transferred to the FSLIC Resolution Fund.

(B) Additional claims on assets

The FSLIC Resolution Fund shall pay to the Savings Association Insurance Fund such amounts as are needed for administrative and supervisory expenses from August 9, 1989, through September 30, 1992.

(3) Separate holding

Assets and liabilities transferred to the FSLIC Resolution Fund shall be the assets and liabilities of the Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of the Bank Insurance Fund, the Savings Association Insurance Fund, or the Corporation for accounting, reporting, or any other purpose.

(4) Rights, powers, and duties

Effective August 10, 1989, the Corporation shall have all rights, powers, and duties to

carry out the Corporation's duties with respect to the assets and liabilities of the FSLIC Resolution Fund that the Corporation otherwise has under this chapter.

(5) Corporation as conservator or receiver

(A) In general

Effective August 10, 1989, the Corporation shall succeed the Federal Savings and Loan Insurance Corporation as conservator or receiver with respect to any depository institution—

(i) the accounts of which were insured before August 10, 1989 by the Federal Savings and Loan Insurance Corporation; and

(ii) for which a conservator or receiver was appointed before January 1, 1989.

(B) Rights, powers, and duties

When acting as conservator or receiver with respect to any depository institution described in subparagraph (A), the Corporation shall have all rights, powers, and duties that the Corporation otherwise has as conservator or receiver under this chapter.

(b) Source of funds

The FSLIC Resolution Fund shall be funded from the following sources to the extent funds are needed in the listed priority:

(1) Income earned on assets of the FSLIC Resolution Fund.

(2) Liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships to the extent such funds are not required by the Resolution Funding Corporation pursuant to section 1441b of this title or the Financing Corporation pursuant to section 1441 of this title.

(3) Amounts borrowed by the Financing Corporation pursuant to section 1441 of this title.

(4) During the period beginning on August 9, 1989, and ending on December 31, 1992, amounts assessed against Savings Association Insurance Fund members by the Corporation pursuant to section 1817 of this title which are not required by the Financing Corporation pursuant to section 1441 of this title or by the Resolution Funding Corporation pursuant to section 1441b of this title.

(c) Treasury backup

(1) In general

If the funds described in subsections (a) and (b) of this section are insufficient to satisfy the liabilities of the FSLIC Resolution Fund, the Secretary of the Treasury shall pay to the Fund such amounts as may be necessary, as determined by the Corporation and the Secretary, for FSLIC Resolution Fund purposes.

(2) Authorization of appropriations

There are authorized to be appropriated to the Secretary of the Treasury, without fiscal year limitation, such sums as may be necessary to carry out this section.

(d) Legal proceedings

Any judgment resulting from a proceeding to which the Federal Savings and Loan Insurance Corporation was a party prior to its dissolution or which is initiated against the Corporation with respect to the Federal Savings and Loan Insurance Corporation or with respect to the FSLIC Resolution Fund shall be limited to the assets of the FSLIC Resolution Fund.

(e) Transfer of net proceeds from sale of RTC assets

The FSLIC Resolution Fund shall transfer to the Resolution Funding Corporation any net proceeds from the sale of assets acquired from the Resolution Trust Corporation upon the termination of such Corporation pursuant to section 1441a of this title.

(f) Dissolution

The FSLIC Resolution Fund shall be dissolved upon satisfaction of all debts and liabilities and sale of all assets. Upon dissolution any remaining funds shall be paid into the Treasury. Any administrative facilities and supplies, including offices and office supplies, shall be transferred to the Corporation for use by and to be held as assets of the Savings Association Insurance Fund.

(Sept. 21, 1950, ch. 967, § 2[11A], as added Pub. L. 101–73, title II, § 215, Aug. 9, 1989, 103 Stat. 252; amended Pub. L. 102–233, title II, § 202(c), (d), Dec. 12, 1991, 105 Stat. 1767; Pub. L. 102–242, title I, § 161(b), Dec. 19, 1991, 105 Stat. 2285; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(J)–(L), Sept. 30, 1996, 110 Stat. 3009–492.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–208, § 2704(d)(14)(J)(i), (ii), which directed striking out subpar. (A) heading and subpar. (B) and redesignating subpar. (A) as par. (2), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (a)(3). Pub. L. 104–208, § 2704(d)(14)(J)(iii), which directed substitution of "the Deposit Insurance Fund" for "the Bank Insurance Fund, the Savings Association Insurance Fund,", was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b)(4). Pub. L. 104–208, § 2704(d)(14)(K), which directed striking out par. (4), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (f). Pub. L. 104–208, § 2704(d)(14)(L), which directed substitution of "Deposit Insurance Fund" for "Savings Association Insurance Fund", was not executed. See Effective Date of 1996 Amendment note below.

1991—Subsec. (a)(2)(B). Pub. L. 102–233, § 202(c), substituted "1992" for "1991".

Subsec. (a)(4), (5). Pub. L. 102–242 added pars. (4) and (5).

Subsec. (b)(4). Pub. L. 102–233, § 202(d), substituted "1992" for "1991".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

PAYMENT OF JUDGMENTS AND SETTLEMENTS OF CLAIMS AGAINST UNITED STATES

Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 110], Nov. 29, 1999, 113 Stat. 1535, 1501A–20, provided that: "Hereafter, for payments of judgments against the United States and compromise settlements of claims in suits against the United States arising from the Financial Institutions Reform, Recovery and Enforcement Act [Pub. L. 101–73, see Tables for classification] and its implementation, such sums as may be necessary, to remain available until expended: *Provided*, That the fore-

going authority is available solely for payment of judgments and compromise settlements: *Provided further*, That payment of litigation expenses is available under existing authority and will continue to be made available as set forth in the Memorandum of Understanding between the Federal Deposit Insurance Corporation and the Department of Justice, dated October 2, 1998.''

Similar provisions were contained in Pub. L. 105–277, div. A, §101(b) [title I, §130], Oct. 21, 1998, 112 Stat. 2681–50, 2681–77.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1441 of this title.

§ 1822. Corporation as receiver

(a) Bond not required; agents; fee

The Corporation as receiver of an insured depository institution or branch of a foreign bank shall not be required to furnish bond and may appoint an agent or agents to assist it in its duties as such receiver. All fees, compensation, and expenses of liquidation and administration shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver.

(b) Payment of insured deposit as discharge from liability

Payment of an insured deposit to any person by the Corporation shall discharge the Corporation, and payment of a transferred deposit to any person by the new bank or by an insured depository institution in which a transferred deposit has been made available shall discharge the Corporation and such new bank or other insured depository institution, to the same extent that payment to such person by the depository institution in default would have discharged it from liability for the insured deposit.

(c) Recognition of claimant not on depository institution records

Except as otherwise prescribed by the Board of Directors, neither the Corporation nor such new bank or other insured depository institution shall be required to recognize as the owner of any portion of a deposit appearing on the records of the depository institution in default under a name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of such depository institution in default as part owner of said deposit, if such recognition would increase the aggregate amount of the insured deposits in such depository institution in default.

(d) Withholding payments to meet liability to depository institution

The Corporation may withhold payment of such portion of the insured deposit of any depositor in a depository institution in default as may be required to provide for the payment of any liability of such depositor to the depository institution in default or its receiver, which is not offset against a claim due from such depository institution, pending the determination and payment of such liability by such depositor or any other person liable therefor.

(e) Disposition of unclaimed deposits

(1) Notices

(A) First notice

Within 30 days after the initiation of the payment of insured deposits under section 1821(f) of this title, the Corporation shall provide written notice to all insured depositors that they must claim their deposit from the Corporation, or if the deposit has been transferred to another institution, from the transferee institution.

(B) Second notice

A second notice containing this information shall be mailed by the Corporation to all insured depositors who have not responded to the first notice, 15 months after the Corporation initiates such payment of insured depositors.

(C) Address

The notices shall be mailed to the last known address of the depositor appearing on the records of the insured depository institution in default.

(2) Transfer to appropriate State

If an insured depositor fails to make a claim for his, her, or its insured or transferred deposit within 18 months after the Corporation initiates the payment of insured deposits under section 1821(f) of this title—

(A) any transferee institution shall refund the deposit to the Corporation, and all rights of the depositor against the transferee institution shall be barred; and

(B) with the exception of United States deposits, the Corporation shall deliver the deposit to the custody of the appropriate State as unclaimed property, unless the appropriate State declines to accept custody. Upon delivery to the appropriate State, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 1821(g)(1) of this title.

(3) Refusal of appropriate State to accept custody

If the appropriate State declines to accept custody of the deposit tendered pursuant to paragraph (2)(B), the deposit shall not be delivered to any State, and the insured depositor shall claim the deposit from the Corporation before the receivership is terminated, or all rights of the depositor with respect to such deposit shall be barred.

(4) Treatment of United States deposits

If the deposit is a United States deposit it shall be delivered to the Secretary of the Treasury for deposit in the general fund of the Treasury. Upon delivery to the Secretary of the Treasury, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 1821(g)(1) of this title.

(5) Reversion

If a depositor does not claim the deposit delivered to the custody of the appropriate State pursuant to paragraph (2)(B) within 10 years of the date of delivery, the deposit shall be immediately refunded to the Corporation and become its property. All rights of the depositor

against the appropriate State with respect to such deposit shall be barred as of the date of the refund to the Corporation.

(6) Definitions

For purposes of this subsection—

(A) the term ''transferee institution'' means the insured depository institution in which the Corporation has made available a transferred deposit pursuant to section 1821(f)(1) of this title;

(B) the term ''appropriate State'' means the State to which notice was mailed under paragraph (1)(C), except that if the notice was not mailed to an address that is within a State it shall mean the State in which the depository institution in default has its main office; and

(C) the term ''United States deposit'' means an insured or transferred deposit for which the deposit records of the depository institution in default disclose that title to the deposit is held by the United States, any department, agency, or instrumentality of the Federal Government, or any officer or employee thereof in such person's official capacity.

(f) Conflict of interest

(1) Applicability of other provisions

(A) Clarification of status of Corporation

The Corporation is, and has been since its creation, an agency for purposes of title 18.

(B) Treatment of contractors

Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee of the Corporation for purposes of title 18 and this chapter. Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation, and who is not otherwise treated as an officer or employee of the United States for purposes of title 18 shall be deemed to be a public official for purposes of section 201 of title 18.

(2) Regulations concerning employee conduct

The officers and employees of the Corporation and those individuals under contract to the Corporation who are deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 shall be subject to the ethics and conflict of interest rules and regulations issued by the Office of Government Ethics, including those concerning employee conduct, financial disclosure, and post-employment activities. The Board of Directors may prescribe regulations that supplement such rules and regulations only with the concurrence of that Office.

(3) Regulations concerning independent contractors

The Board of Directors shall prescribe regulations applicable to those independent contractors who are not deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18 governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41. Any such regulations shall be in addition to, and not in lieu of, any other statute or regulation which may apply to the conduct of such independent contractors.

(4) Disapproval of contractors

(A) In general

The Board of Directors shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

(B) Prohibition from service on behalf of Corporation

The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

(i) entering into any contract with the Corporation; or

(ii) becoming employed by the Corporation or otherwise performing any service for or on behalf of the Corporation.

(C) Information required to be submitted

The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

(i) a list and description of any instance during the 5 years preceding the submission of such application in which the person or a company under such person's control defaulted on a material obligation to an insured depository institution; and

(ii) such other information as the Board may prescribe by regulation.

(D) Subsequent submissions

(i) In general

No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless—

(I) all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation; and

(II) the Corporation does not disapprove of the direct or indirect employment of such person.

(ii) Finality of determination

Any determination made by the Corporation pursuant to this paragraph shall be in the Corporation's sole discretion and shall not be subject to review.

(E) Prohibition required in certain cases

The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

(i) been convicted of any felony;

(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(iii) demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(iv) caused a substantial loss to Federal deposit insurance funds;

from performing any service on behalf of the Corporation.

(5) Abrogation of contracts

The Corporation may rescind any contract with a person who—

(A) fails to disclose a material fact to the Corporation;

(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation; or

(C) has been subject to a final enforcement action by any Federal banking agency.

(6) Priority of FDIC rules

To the extent that the regulations under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the regulations prescribed by the Board of Directors under this subsection when acting for or on behalf of the Corporation. Notwithstanding the preceding sentence, the rules of the Corporation shall not take priority over the ethics and conflict of interest rules and regulations promulgated by the Office of Government Ethics unless specifically authorized by that Office.

(Sept. 21, 1950, ch. 967, § 2[12], 64 Stat. 887; Pub. L. 95–369, § 6(c)(23), Sept. 17, 1978, 92 Stat. 619; Pub. L. 97–320, title I, § 113(*l*), Oct. 15, 1982, 96 Stat. 1474; Pub. L. 101–73, title II, §§ 201(a), 216, Aug. 9, 1989, 103 Stat. 187, 254; Pub. L. 103–44, § 1, June 28, 1993, 107 Stat. 220; Pub. L. 103–204, § 19(a), Dec. 17, 1993, 107 Stat. 2402; Pub. L. 104–179, § 4(b)(1), Aug. 6, 1996, 110 Stat. 1567.)

PRIOR PROVISIONS

Section is derived from subsec. (m) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (f)(3). Pub. L. 104–179 struck out ", with the concurrence of the Office of Government Ethics," after "The Board of Directors".

1993—Subsec. (e). Pub. L. 103–44 inserted heading and amended text generally. Prior to amendment, text read as follows: "If, after the Corporation shall have given at least three months' notice to the depositor by mailing a copy thereof to his last-known address appearing on the records of the depository institution in default, any depositor in the depository institution in default shall fail to claim his insured deposit from the Corporation within eighteen months after the appointment of the receiver for the depository institution in default, or shall fail within such period to claim or arrange to continue the transferred deposit with the new bank or with the other insured depository institution which assumes liability therefor, all rights of the depositor against the Corporation with respect to the insured deposit, and against the new bank and such other insured depository institution with respect to the transferred deposit, shall be barred, and all rights of the depositor against the depository institution in default and its shareholders, or the receivership estate to which the Corporation may have become subrogated, shall thereupon revert to the depositor. The amount of any transferred deposits not claimed within such eighteen months' period, shall be refunded to the Corporation."

Subsec. (f). Pub. L. 103–204 added subsec. (f).

1989—Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

Subsec. (a). Pub. L. 101–73, § 216(2), inserted heading and text of subsec. (a), and struck out former subsec. (a) which read as follows: "Notwithstanding any other provision of law, the Corporation as receiver of a closed national bank, branch of a foreign bank, insured Federal savings bank, or District bank shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such receiver, and all fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver."

Subsecs. (b), (c). Pub. L. 101–73, § 216(1), substituted "depository institution in default" for "closed bank" wherever appearing.

Subsec. (d). Pub. L. 101–73, § 216(1), (3), substituted "depository institution in default" for "closed bank" in three places, struck out "as a stockholder of the depository institution in default, or of any liability of such depositor" after "payment of any liability of such depositor", and substituted "such depository institution" for "such bank".

Subsec. (e). Pub. L. 101–73, § 216(1), substituted "depository institution in default" for "closed bank" wherever appearing.

1982—Subsec. (a). Pub. L. 97–320 inserted "insured Federal savings bank," after "foreign bank,".

1978—Subsec. (a). Pub. L. 95–369 inserted ", branch of a foreign bank," after "a closed national bank".

EFFECTIVE DATE OF 1993 AMENDMENTS

Section 19(c) of Pub. L. 103–204 provided that: "The amendment made by subsection (a) [amending this section] shall apply after the end of the 6-month period beginning on the date of enactment of this Act [Dec. 17, 1993]."

Section 2 of Pub. L. 103–44 provided that:

"(a) IN GENERAL.—The amendments made by section 1 of this Act [amending this section] shall only apply with respect to institutions for which the Corporation has initiated the payment of insured deposits under section 11(f) of the Federal Deposit Insurance Act [12 U.S.C. 1821(f)] after the date of enactment of this Act [June 28, 1993].

"(b) SPECIAL RULE FOR RECEIVERSHIPS IN PROGRESS.—Section 12(e) of the Federal Deposit Insurance Act [12 U.S.C. 1822(e)] as in effect on the day before the date of enactment of this Act [June 28, 1993] shall apply with respect to insured deposits in depository institutions for which the Corporation was first appointed receiver during the period between January 1, 1989 and the date of enactment of this Act, except that such section 12(e) shall not bar any claim made against the Corporation by an insured depositor for an insured or transferred deposit, so long as such claim is made prior to the termination of the receivership.

"(c) INFORMATION TO STATES.—Within 120 days after the date of enactment of this Act [June 28, 1993], the Corporation shall provide, at the request of and for the sole use of any State, the name and last known address of any insured depositor (as shown on the records of the institution in default) eligible to make a claim against the Corporation solely due to the operation of subsection (b) of this section.

''(d) DEFINITION.—For purposes of this section, the term 'Corporation' means the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the Federal Savings and Loan Insurance Corporation, as appropriate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1441a, 1821 of this title; title 18 section 1032.

§ 1823. Corporation monies

(a) Investment of Corporation's funds

(1) Authority

Funds held in the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) Limitation

The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the Secretary may determine.

(b) Depository accounts

The depository accounts of the Corporation shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a depository institution designated as a depository or fiscal agent of the United States: *Provided*, That the Secretary of the Treasury may waive the requirements of this subsection under such conditions as he may determine: *And provided further*, That this subsection shall not apply to the establishment and maintenance in any depository institution for temporary purposes of depository accounts not in excess of $50,000 in any one depository institution, or to the establishment and maintenance in any depository institution of any depository accounts to facilitate the payment of insured deposits, or the making of loans to, or the purchase of assets of, insured depository institutions. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depositary of public moneys, except receipts from customs, under such regulations as may be prescribed by the said Secretary, and may also be employed as a financial agent of the Government. It shall perform all such reasonable duties as depositary of public moneys and financial agent of the Government as may be required of it.

(c) Assistance to insured depository institutions

(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured depository institution—

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to an insured bank in default, such action is taken to restore such insured bank to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of another[1] insured depository institution described in subparagraph (B) with another insured depository institution or the sale of any or all of the assets of such insured depository institution or the assumption of any or all of such insured depository institution's liabilities by another insured depository institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe—

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in, or purchase the securities of, such other insured depository institution or the company which controls or will acquire control of such other insured depository institution;

(iii) to guarantee such other insured depository institution or the company which controls or will acquire control of such other insured depository institution against loss by reason of such insured institution's merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution—

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation, in its sole discretion, to require assistance under subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C) Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidating with or acquiring the assets of an insured de-

[1] So in original. Probably should be ''an''.

pository institution under subsection (f) or (k) of this section with such financial assistance as it could provide an insured institution under this subsection.

(4) LEAST-COST RESOLUTION REQUIRED.—

(A) IN GENERAL.—Notwithstanding any other provision of this chapter, the Corporation may not exercise any authority under this subsection or subsection (d), (f), (h), (i), or (k) of this section with respect to any insured depository institution unless—

(i) the Corporation determines that the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and

(ii) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the deposit insurance fund of all possible methods for meeting the Corporation's obligation under this section.

(B) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible cost to the deposit insurance fund, the Corporation shall comply with the following provisions:

(i) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

(I) evaluate alternatives on a present-value basis, using a realistic discount rate;

(II) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

(III) retain the documentation for not less than 5 years.

(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the deposit insurance fund.

(C) TIME OF DETERMINATION.—

(i) GENERAL RULE.—For purposes of this subsection, the determination of the costs of providing any assistance under paragraph (1) or (2) or any other provision of this section with respect to any depository institution shall be made as of the date on which the Corporation makes the determination to provide such assistance to the institution under this section.

(ii) RULE FOR LIQUIDATIONS.—For purposes of this subsection, the determination of the costs of liquidation of any depository institution shall be made as of the earliest of—

(I) the date on which a conservator is appointed for such institution;

(II) the date on which a receiver is appointed for such institution; or

(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to such institution.

(D) LIQUIDATION COSTS.—In determining the cost of liquidating any depository institution for the purpose of comparing the costs under subparagraph (A) (with respect to such institution), the amount of such cost may not exceed the amount which is equal to the sum of the insured deposits of such institution as of the earliest of the dates described in subparagraph (C), minus the present value of the total net amount the Corporation reasonably expects to receive from the disposition of the assets of such institution in connection with such liquidation.

(E) DEPOSIT INSURANCE FUNDS AVAILABLE FOR INTENDED PURPOSE ONLY.—

(i) IN GENERAL.—After December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, the Corporation may not take any action, directly or indirectly, with respect to any insured depository institution that would have the effect of increasing losses to any insurance fund by protecting—

(I) depositors for more than the insured portion of deposits (determined without regard to whether such institution is liquidated); or

(II) creditors other than depositors.

(ii) DEADLINE FOR REGULATIONS.—The Corporation shall prescribe regulations to implement clause (i) not later than January 1, 1994, and the regulations shall take effect not later than January 1, 1995.

(iii) PURCHASE AND ASSUMPTION TRANSACTIONS.—No provision of this subparagraph shall be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution for which the Corporation has been appointed conservator or receiver to acquire uninsured deposit liabilities of such institution so long as the insurance fund does not incur any loss with respect to such deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

(F) DISCRETIONARY DETERMINATIONS.—Any determination which the Corporation may make under this paragraph shall be made in the sole discretion of the Corporation.

(G) SYSTEMIC RISK.—

(i) EMERGENCY DETERMINATION BY SECRETARY OF THE TREASURY.—Notwithstanding subparagraphs (A) and (E), if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that—

(I) the Corporation's compliance with subparagraphs (A) and (E) with respect to an insured depository institution would have serious adverse effects on economic conditions or financial stability; and

(II) any action or assistance under this subparagraph would avoid or mitigate such adverse effects,

the Corporation may take other action or provide assistance under this section as necessary to avoid or mitigate such effects.

(ii) REPAYMENT OF LOSS.—The Corporation shall recover the loss to the appropriate insurance fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) expeditiously from 1 or more emergency special assessments on the members of the insurance fund (of which such institution is a member) equal to the product of—

(I) an assessment rate established by the Corporation; and

(II) the amount of each member's average total assets during the semiannual period, minus the sum of the amount of the member's average total tangible equity and the amount of the member's average total subordinated debt.

(iii) DOCUMENTATION REQUIRED.—The Secretary of the Treasury shall—

(I) document any determination under clause (i); and

(II) retain the documentation for review under clause (iv).

(iv) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under clause (i), including—

(I) the basis for the determination;

(II) the purpose for which any action was taken pursuant to such clause; and

(III) the likely effect of the determination and such action on the incentives and conduct of insured depository institutions and uninsured depositors.

(v) NOTICE.—

(I) IN GENERAL.—The Secretary of the Treasury shall provide written notice of any determination under clause (i) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(II) DESCRIPTION OF BASIS OF DETERMINATION.—The notice under subclause (I) shall include a description of the basis for any determination under clause (i).

(H) RULE OF CONSTRUCTION.—No provision of law shall be construed as permitting the Corporation to take any action prohibited by paragraph (4) unless such provision expressly provides, by direct reference to this paragraph, that this paragraph shall not apply with respect to such action.

(5) The Corporation may not use its authority under this subsection to purchase the voting or common stock of an insured depository institution. Nothing in the preceding sentence shall be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect its financial interest.

(6)(A) During any period in which an insured depository institution has received assistance under this subsection and such assistance is still outstanding, such insured depository institution may defer the payment of any State or local tax which is determined on the basis of the deposits held by such insured depository institution or of the interest or dividends paid on such deposits.

(B) When such insured depository institution no longer has any outstanding assistance, such insured depository institution shall pay all taxes which were deferred under subparagraph (A). Such payments shall be made in accordance with a payment plan established by the Corporation, after consultation with the applicable State and local taxing authorities.

(7) The transfer of any assets or liabilities associated with any trust business of an insured depository institution in default under subparagraph (2)(A) shall be effective without any State or Federal approval, assignment, or consent with respect thereto.

(8) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Subject to the least-cost provisions of paragraph (4), the Corporation shall consider providing direct financial assistance under this section for depository institutions before the appointment of a conservator or receiver for such institution only under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased; and

(II) it is unlikely that the institution can meet all currently applicable capital standards without assistance.

(ii) OTHER CRITERIA.—The depository institution meets the following criteria:

(I) The appropriate Federal banking agency and the Corporation have determined that, during such period of time preceding the date of such determination as the agency or the Corporation considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

(II) The institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

(B) PUBLIC DISCLOSURE.—Any determination under this paragraph to provide assistance under this section shall be made in writing and published in the Federal Register.

(9) Any assistance provided under this subsection may be in subordination to the rights of depositors and other creditors.

(10) In its annual report to the Congress, the Corporation shall report the total amount it has saved, or estimates it has saved, by exercising the authority provided in this subsection.

(11) Payments made under this subsection shall be made—

(A) from the Bank Insurance Fund in the case of payments to or on behalf of a member of such Fund; or

(B) from the Savings Association Insurance Fund or from funds made available by the Res-

olution Trust Corporation in the case of payments to or on behalf of any Savings Association Insurance Fund member.

(d) Sale of assets to Corporation

(1) In general

Any conservator, receiver, or liquidator appointed for any insured depository institution in default, including the Corporation acting in such capacity, shall be entitled to offer the assets of such depository institutions for sale to the Corporation or as security for loans from the Corporation.

(2) Proceeds

The proceeds of every sale or loan of assets to the Corporation shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such depository institutions.

(3) Rights and powers of Corporation

(A) In general

With respect to any asset acquired or liability assumed pursuant to this section, the Corporation shall have all of the rights, powers, privileges, and authorities of the Corporation as receiver under sections 1821 and 1825(b) of this title.

(B) Rule of construction

Such rights, powers, privileges, and authorities shall be in addition to and not in derogation of any rights, powers, privileges, and authorities otherwise applicable to the Corporation.

(C) Fiduciary responsibility

In exercising any right, power, privilege, or authority described in subparagraph (A), the Corporation shall continue to be subject to the fiduciary duties and obligations of the Corporation as receiver to claimants against the insured depository institution in receivership.

(D) Disposition of assets

In exercising any right, power, privilege, or authority described in subparagraph (A) regarding the sale or disposition of assets sold to the Corporation pursuant to paragraph (1), the Corporation shall conduct its operations in a manner which—

(i) maximizes the net present value return from the sale or disposition of such assets;

(ii) minimizes the amount of any loss realized in the resolution of cases;

(iii) ensures adequate competition and fair and consistent treatment of offerors;

(iv) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers; and

(v) maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals.

(4) Loans

The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured depository institution which is now or may hereafter be in default.

(e) Agreements against interests of Corporation

(1) In general

No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 1821 of this title, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

(A) is in writing,

(B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

(C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(D) has been, continuously, from the time of its execution, an official record of the depository institution.

(2) Public deposits

An agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity or of any depositor referred to in section 1821(a)(2) of this title shall not be deemed to be invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement.

(f) Assisted emergency interstate acquisitions

(1) This subsection shall apply only to an acquisition of an insured bank or a holding company by an out-of-State bank[2] savings association or out-of-State holding company for which the Corporation provides assistance under subsection (c) of this section.

(2)(A) Whenever an insured bank with total assets of $500,000,000 or more (as determined from its most recent report of condition) is in default, the Corporation, as receiver, may, in its discretion and upon such terms and conditions as the Corporation may determine, arrange the sale of assets of the bank in default and the assumption of the liabilities of the bank in default, including the sale of such assets to and the assumption of such liabilities by an insured depository institution located in the State where the bank in default was chartered but established by an out-of-State bank or holding company. Where otherwise lawfully required, a transaction under this subsection must be approved by the primary Federal or State supervisor of all parties thereto.

(B)(i) Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State bank supervisor of the State in which the insured bank in default was chartered.

(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions of this paragraph. Such notice

[2] So in original. Probably should be followed by ''or''.

may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) If the State supervisor objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

(3) EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF DEFAULT.—

(A) ACQUISITION OF INSURED BANKS IN DANGER OF DEFAULT.—One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain—

(i) an insured bank in danger of default which has total assets of $500,000,000 or more; or

(ii) 2 or more affiliated insured banks in danger of default which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If one or more out-of-State banks or out-of-State holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain—

(i) the holding company which controls the affiliated insured banks so acquired; or

(ii) any other affiliated insured bank.

(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of default which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1), if—

(i) at any time after August 10, 1987, the Corporation provides any assistance under subsection (c) of this section to an insured bank; and

(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

(E) STATE BANK SUPERVISOR APPROVAL.—The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of default is located approves the acquisition.

(F) OTHER REQUIREMENTS NOT AFFECTED.—This paragraph does not affect any other requirement under Federal or State law for regulatory approval of an acquisition under this paragraph.

(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE.—Any acquisition described in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate.

(4)(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 1842(d) of this title, any provision of State law, and section 1730a(e)(3)[3] of this title shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.

(B) Any subsidiary created by operation of this subsection may retain and operate any existing branch or branches of the institution merged with or acquired under paragraph (2) or (3), but otherwise shall be subject to the conditions upon which a national bank may establish and operate branches in the State in which such insured institution is located.

(C) No insured institution acquired under this subsection shall after it is acquired move its principal office or any branch office which it would be prohibited from moving if the institution were a national bank.

(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT TO STATE LAW.—

(i) IN GENERAL.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

(ii) DELAYED DATE OF APPLICABILITY.—Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of—

(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

(II) the end of any period established under State law during which such out-of-State bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

[3] See References in Text note below.

(iii) DETERMINATION OF PRINCIPALLY CONDUCTED.—For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 1842(d) of this title with respect to such holding company.

(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company.

(5) In determining whether to arrange a sale of assets and assumption of liabilities or an acquisition or a merger under the authority of paragraph (2) or (3), the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the bank in default or the bank in danger of default.

(6)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the ''lowest acceptable offer''), is from an offeror that is not an existing in-State bank of the same type as the bank that is in default or is in danger of default (or, where the bank is an insured bank other than a mutual savings bank, the lowest acceptable offer is not from an in-State holding company), the Corporation shall permit the offeror which made the initial lowest acceptable offer and each offeror who made an offer the estimated cost of which to the Corporation was within 15 per centum or $15,000,000, whichever is less, of the initial lowest acceptable offer to submit a new offer.

(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions. The Corporation shall authorize transactions under this subsection considering the following priorities:

(i) First, between depository institutions of the same type within the same State.

(ii) Second, between depository institutions of the same type—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

(iv) Fourth, between depository institutions of different types in the same State.

(v) Fifth, between depository institutions of different types—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(vi) Sixth, between depository institutions of different types in different States other than the States described in clause (v).

(C) MINORITY BANK PRIORITY.—In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).

(D) In determining the cost of offers and reoffers, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

(7) No sale may be made under the provisions of paragraph (2) or (3)—

(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 business of banking in any part of the United States;

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

(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository institution.

(8) As used in this subsection—

(A) the term ''in-State depository institution or in-State holding company'' means an existing insured depository institution currently operating in the State in which the bank in default or the bank in danger of default is chartered or a company that is operating an insured depository institution subsidiary in the State in which the bank in default or the bank in danger of default is chartered;

(B) the term ''acquire'' means to acquire, directly or indirectly, ownership or control through—

(i) an acquisition of shares;

(ii) an acquisition of assets or assumption of liabilities;

(iii) a merger or consolidation; or

(iv) any similar transaction;

(C) the term ''affiliated insured bank'' means—

(i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and

(ii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and

(D) the term ''subsidiary'' has the meaning given to such term in section 1841(d) of this title.

(9) NO ASSISTANCE AUTHORIZED FOR CERTAIN SUBSIDIARIES OF HOLDING COMPANIES.—

(A) IN GENERAL.—The Corporation shall not provide any assistance to a subsidiary, other

than a subsidiary that is an insured depository institution, of a holding company in connection with any acquisition under this subsection.

(B) INTERMEDIATE HOLDING COMPANY PERMITTED.—This paragraph does not prohibit an intermediate holding company or an affiliate of an insured depository institution from being a conduit for assistance ultimately intended for an insured bank.

(10) ANNUAL REPORT.—

(A) REQUIRED.—In its annual report to Congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

(i) The number of acquisitions under this subsection.

(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.

(11) DETERMINATION OF TOTAL ASSETS.—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.

(12) ACQUISITION OF MINORITY BANK BY MINORITY BANK HOLDING COMPANY WITHOUT REGARD TO ASSET SIZE.—

(A) IN GENERAL.—For the purpose of ensuring continued minority control of a minority-controlled bank, paragraphs (2) and (3) shall apply with respect to the acquisition of a minority-controlled bank by an out-of-State minority-controlled depository institution or depository institution holding company without regard to the fact that the total assets of such minority-controlled bank are less than $500,000,000.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) MINORITY BANK.—The term ''minority bank'' means any depository institution described in clause (i), (ii), or (iii) of section 461(b)(1)(A) of this title—

(I) more than 50 percent of the ownership or control of which is held by one or more minority individuals; and

(II) more than 50 percent of the net profit or loss of which accrues to minority individuals.

(ii) MINORITY.—The term ''minority'' means any Black American, Native American, Hispanic American, or Asian American.

(g) Payment of interest on stock subscriptions

Prior to July 1, 1951, the Corporation shall pay out of its capital account to the Secretary of the Treasury an amount equal to 2 per centum simple interest per annum on amounts advanced to the Corporation on stock subscriptions by the Secretary of the Treasury and the Federal Reserve banks, from the time of such advances until the amounts thereof were repaid. The amount payable hereunder shall be paid in two equal installments, the first installment to be paid prior to December 31, 1950.

(h) Reopening or aversion of closing of insured branch of foreign bank

The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen an insured depository institution in default or to avert the default of an insured depository institution may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Directors, the public interest in avoiding the default of such branch substantially outweighs any additional risk of loss to the Bank Insurance Fund which the exercise of such powers would entail.

(i) Repealed. Pub. L. 97–320, title II, § 206, Oct. 15, 1982, 96 Stat. 1496

(j) Loan loss amortization for certain banks

(1) Eligibility

The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that—

(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

(B) the agricultural bank has a plan to restore its capital, not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

(2) Seven-year loss amortization

(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(3) Regulations

Not later than 90 days after August 10, 1987, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

(4) Definitions

As used in this subsection—

(A) the term ''agricultural bank'' means a bank—

(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) which is located in an area the economy of which is dependent on agriculture;

(iii) which has assets of $100,000,000 or less; and

(iv) which has—

(I) at least 25 percent of its total loans in qualified agricultural loans; or

(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or State bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

(B) the term ''qualified agricultural loan'' means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

(5) Maintenance of portfolio

As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986.

(k) Emergency acquisitions

(1) In general

(A) Acquisitions authorized

(i) Transactions described

Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—

(I) a savings association that is eligible for assistance pursuant to subsection (c) of this section to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

(II) any other savings association to acquire control of such savings association, or

(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

(ii) Terms of transactions

Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

(iii) Approval by appropriate agency

Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

(iv) Acquisitions by savings associations

Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Director of the Office of Thrift Supervision, hold that savings association as a subsidiary notwithstanding the percentage limitations of section 1464(c)(4)(B) of this title.

(v) Dual service

Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act [12 U.S.C. 3201 et seq.] may, with the approval of the Corporation, continue for up to 10 years.

(vi) Continued applicability of certain State restrictions

Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

(B) Consultation with State official

(i) Consultation required

Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

(ii) Period for State response

The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) Approval over objection of State official

If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

(2) Solicitation of offers

(A) In general

In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

(B) Minority-controlled institutions

In the case of a minority-controlled depository institution, the Corporation shall seek

an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

(3) Determination of costs

In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

(4) Branching provisions

(A) In general

If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing facilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

(B) Restrictions

(i) In general

Notwithstanding subparagraph (A), if—

(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of title 26, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the Savings Association Insurance Fund member is located.

(ii) Transition period

The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

(5) Assistance before appointment of conservator or receiver

(A) Assistance proposals

The Corporation shall consider proposals by Savings Association Insurance Fund members for assistance pursuant to subsection (c) of this section before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

(i) Troubled condition criteria

The Corporation determines—

(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

(ii) Other criteria

The member meets the following criteria:

(I) Before August 9, 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

(II) The member's negative tangible capital position is substantially attributable to its participation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

(III) The member is a qualified thrift lender (as defined in section 1467a(m) of this title) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

(VI) The member's offices are located in an economically depressed region.

(B) Corporation consideration of assistance proposal

If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

(C) "Economically depressed region" defined

For purposes of this paragraph, the term ''economically depressed region'' means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

(Sept. 21, 1950, ch. 967, § 2[13], 64 Stat. 888; Pub. L. 95–369, § 6(c)(24), Sept. 17, 1978, 92 Stat. 619; Pub. L. 97–320, title I, §§ 111, 113(m), 116, 141(a)(1), (3), title II, §§ 203, 206, Oct. 15, 1982, 96 Stat. 1469, 1474, 1476, 1488, 1489, 1492, 1496; Pub. L. 97–457, §§ 1(a), 4, 10(a), Jan. 12, 1983, 96 Stat. 2507, 2508; Pub. L. 98–29, § 1(a), May 16, 1983, 97 Stat. 189; Pub. L. 100–86, title V, §§ 502(a)–(g), (i), 509(a), title VIII, § 801, Aug. 10, 1987, 101 Stat. 623–627, 629, 635, 656; Pub. L. 101–73, title II, §§ 201(a), 217, Aug. 9, 1989, 103 Stat. 187, 254; Pub. L. 102–242, title I, §§ 123(b),

141(a)(1), (e), Dec. 19, 1991, 105 Stat. 2252, 2273, 2278; Pub. L. 103–325, title III, § 317, title VI, § 602(a)(34)–(42), Sept. 23, 1994, 108 Stat. 2223, 2289, 2290; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(M), Sept. 30, 1996, 110 Stat. 3009–492.)

REFERENCES IN TEXT

Section 1730a of this title, referred to in subsec. (f)(4)(A), was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

The Depository Institution Management Interlocks Act, referred to in subsec. (k)(1)(A)(v), is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, as amended, which is classified principally to chapter 33 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

PRIOR PROVISIONS

Section is derived from subsec. (n) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, § 2704(d)(14)(M)(i), which directed substitution of ''Deposit Insurance Fund, the Special Reserve of the Deposit Insurance Fund,'' for ''Bank Insurance Fund, the Savings Association Insurance Fund,'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (c)(4)(E). Pub. L. 104–208, § 2704(d)(14)(M)(ii), which directed substitution of ''fund'' for ''funds'' in heading and ''the Deposit Insurance Fund'' for ''any insurance fund'' in cl. (i), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (c)(4)(G)(ii). Pub. L. 104–208, § 2704(d)(14)(M)(iii), which directed substitution of ''Deposit Insurance Fund'' for ''appropriate insurance fund'', ''insured depository institutions'' for ''the members of the insurance fund (of which such institution is a member)'', ''each insured depository institution's'' for ''each member's'', and ''the institution's'' for ''the member's'' in two places, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (c)(11). Pub. L. 104–208, § 2704(d)(14)(M)(iv), which directed striking out par. (11), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (h). Pub. L. 104–208, § 2704(d)(14)(M)(v), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (k)(4)(B)(i). Pub. L. 104–208, § 2704(d)(14)(M)(vi), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (k)(5)(A). Pub. L. 104–208, § 2704(d)(14)(M)(vii), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'', was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (c)(1)(B). Pub. L. 103–325, § 602(a)(34), substituted ''an insured bank in default'' for ''a in default insured bank'' and ''such insured bank'' for ''such in default insured bank''.

Subsec. (c)(2)(A). Pub. L. 103–325, § 602(a)(35), substituted ''with another insured depository institution'' for ''with an insured institution'' and ''by another depository institution'' for ''by an insured institution''.

Subsec. (e). Pub. L. 103–325, § 317, designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) to (4) as subpars. (A) to (D) of par. (1), respectively, and added par. (2).

Subsec. (f)(2)(B)(i). Pub. L. 103–325, § 602(a)(36), substituted ''the insured bank in default'' for ''the in default insured bank''.

Subsec. (f)(2)(B)(iii). Pub. L. 103–325, § 602(a)(37), substituted ''of'' for ''of of'' after ''percent''.

Subsec. (f)(3). Pub. L. 103–325, § 602(a)(38), substituted ''DEFAULT'' for ''CLOSING'' in heading.

Subsec. (f)(6)(A). Pub. L. 103–325, § 602(a)(39), substituted ''bank that is in default'' for ''bank that has in default''.

Subsec. (f)(6)(B)(i). Pub. L. 103–325, § 602(a)(40), inserted period for semicolon at end.

Subsec. (f)(7)(A), (B). Pub. L. 103–325, § 602(a)(41), struck out ''or'' at end of subpar. (A) and substituted ''; or'' for period at end of subpar. (B).

Subsec. (f)(12)(A). Pub. L. 103–325, § 602(a)(42), substituted ''are'' for ''is''.

1991—Subsec. (c)(4) to (10). Pub. L. 102–242, § 141(a)(1), (e), redesignated former pars. (5) to (9) as (6) to (10), respectively, redesignated subpar. (B) of par. (4) as par. (5), amended par. (4)(A) generally and redesignated it as par. (4), further redesignated pars. (8) to (10) as (9) to (11), respectively, and added par. (8). Prior to amendment, par. (4)(A) read as follows: ''No assistance shall be provided under this subsection in an amount in excess of that amount which the Corporation determines to be reasonably necessary to save the cost of liquidating, including paying the insured accounts of, such insured depository institution, except that such restriction shall not apply in any case in which the Corporation determines that the continued operation of such insured depository institution is essential to provide adequate depository services in its community. In calculating the cost of assistance, the Corporation shall include (i) the immediate and long-term obligations of the Corporation with respect to such assistance, including contingent liabilities, and (ii) the Federal tax revenues foregone by the Government, to the extent reasonably ascertainable.''

Subsec. (d)(3)(D). Pub. L. 102–242, § 123(b), added subpar. (D).

1989—Subsec. (a). Pub. L. 101–73, § 217(1), added heading and text of subsec. (a) and struck out former subsec. (a) which read as follows: ''Money of the Corporation not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States: *Provided*, That the Corporation shall not sell or purchase any such obligations for its own account and in its own right and interest, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury: *And provided further*, That the Secretary of the Treasury may waive the requirement of his approval with respect to any transaction or classes of transactions subject to the provisions of this subsection for such period of time and under such conditions as he may determine.''

Subsec. (b). Pub. L. 101–73, § 217(2), substituted ''depository accounts of the Corporation'', ''temporary purposes of depository accounts'', and ''depository accounts to facilitate'' for ''banking or checking accounts of the Corporation'', ''temporary purposes of banking and checking accounts'', and ''banking and checking accounts to facilitate'', respectively, and substituted ''depository institution'' for ''bank'' in four places.

Pub. L. 101–73, § 201(a), substituted ''insured depository institutions'' for ''insured banks''.

Subsec. (c)(1). Pub. L. 101–73, § 201(a), substituted reference to insured depository institution for reference to insured bank in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 101–73, § 217(3)(A), substituted ''default'' for ''closing''.

Pub. L. 101–73, § 201(a), substituted reference to insured depository institution for reference to insured bank.

Subsec. (c)(1)(B). Pub. L. 101–73, § 217(3)(C), which directed the amendment of subsec. (c) by substituting ''insured depository institution in default'' for ''in default insured depository institution'' wherever appearing, could not be executed because phrase ''in default insured depository institution'' did not appear in text.

Pub. L. 101–73, § 217(3)(B), which directed the amendment of subsec. (c) by substituting ''a'' for ''an'' wherever appearing before ''closed insured bank'', could not

be executed because ''an'' did not appear before ''closed insured bank'' in text.

Pub. L. 101–73, § 217(3)(A), substituted ''in default'' for ''closed'' in two places.

Subsec. (c)(1)(C). Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(2)(A). Pub. L. 101–73, § 217(3)(D)(i), substituted ''such other insured depository institution'' for ''such insured institution'' wherever appearing in cls. (ii) and (iii) and ''another insured depository institution'' for ''an insured depository institution'' in introductory provisions.

Pub. L. 101–73, § 217(3)(D)(ii), (iii), in introductory provisions, substituted ''the sale of any or all of the assets'' for ''the sale of assets'' and ''or the assumption of any or all'' for ''and the assumption''.

Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' and ''insured depository institution's'' for ''insured bank'' and ''insured bank's'' wherever appearing.

Subsec. (c)(2)(B). Pub. L. 101–73, § 217(3)(A), substituted ''in default'' for ''closed'' in cl. (i) and ''default'' for ''closing'' in cl. (ii).

Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(2)(C). Pub. L. 101–73, § 217(3)(E), added subpar. (C).

Subsec. (c)(3). Pub. L. 101–73, § 217(3)(F), substituted ''subsection (f) or (k) of this section'' for ''subsection (f) of this section''.

Pub. L. 101–73, § 201(a), substituted reference to insured depository institution for reference to insured bank.

Subsec. (c)(4)(A). Pub. L. 101–73, § 217(3)(G), substituted ''depository services'' for ''banking services'' and inserted sentence at end relating to calculation of the cost of assistance.

Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(4)(B). Pub. L. 101–73, § 201(a), substituted reference to insured depository institution for reference to insured bank.

Subsec. (c)(5). Pub. L. 101–73, § 201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (c)(6). Pub. L. 101–73, § 217(3)(J), added par. (6). Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 101–73, § 217(3)(I), redesignated par. (6) as (7). Former par. (7) redesignated (8).

Subsec. (c)(8). Pub. L. 101–73, § 217(3)(H), (I), redesignated par. (7) as (8) and struck out former par. (8) which read as follows: ''For purposes of this subsection, the term 'insured institution' means an insured bank as defined in section 1813 of this title or an insured institution as defined in section 1724 of this title.''

Subsec. (c)(9). Pub. L. 101–73, § 217(3)(K), added par. (9).

Subsec. (d). Pub. L. 101–73, § 217(4), added subsec. (d) and struck out former subsec. (d), changing the structure of the subsection from a single unnumbered paragraph to one consisting of four numbered paragraphs.

Subsec. (e). Pub. L. 101–73, § 217(4), added subsec. (e) and struck out former subsec. (e) which read as follows: ''No agreement which tends to diminish or defeat the right, title or interest of the Corporation in any asset acquired by it under this section, either as security for a loan or by purchase, shall be valid against the Corporation unless such agreement (1) shall be in writing, (2) shall have been executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank, (3) shall have been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (4) shall have been, continuously, from the time of its execution, an official record of the bank.''

Subsec. (f)(1). Pub. L. 101–73, § 217(5)(C), inserted ''savings association'' after ''out-of-State bank''.

Subsec. (f)(2)(A). Pub. L. 101–73, § 217(5)(A), (B), substituted ''is in default'' for ''is closed'', and ''bank in default'' for ''closed bank'' in three places.

Subsec. (f)(2)(B). Pub. L. 101–73, § 217(5)(A), (D), substituted ''in default insured bank'' for ''closed insured bank'' in cl. (i), and ''a vote of 75 percent of'' for ''a unanimous vote'' in cl. (iii).

Subsec. (f)(3)(A)(i), (ii), (C), (E). Pub. L. 101–73, § 217(5)(A), substituted ''danger of default'' for ''danger of closing''.

Subsec. (f)(4)(A). Pub. L. 101–73, § 217(5)(E), struck out ''the constitution of any State,'' after ''State law,''.

Subsec. (f)(5). Pub. L. 101–73, § 217(5)(A), (B), substituted ''danger of default'' for ''danger of closing'' and ''bank in default'' for ''closed bank''.

Subsec. (f)(6)(A). Pub. L. 101–73, § 217(5)(A), (F), substituted ''the bank that has in default or is in danger of default'' for ''the bank that has closed or is in danger of closing'' and ''the Corporation shall permit the offeror which made the initial lowest acceptable offer and'' for ''the Corporation shall permit''.

Subsec. (f)(7)(C). Pub. L. 101–73, § 217(5)(G), added subpar. (C).

Subsec. (f)(8)(A). Pub. L. 101–73, § 217(5)(H), redesignated subpar. (C) as (A) and struck out former subpar. (A) which read as follows: ''the term 'receiver' means the Corporation when it has been appointed the receiver of a closed insured bank;''.

Pub. L. 101–73, § 217(5)(A), (B), substituted ''danger of default'' for ''danger of closing'' in two places and ''bank in default'' for ''closed bank'' in two places.

Subsec. (f)(8)(B). Pub. L. 101–73, § 217(5)(H), redesignated subpar. (E) as (B) and struck out former subpar. (B) which read as follows: ''the term 'insured depository institution' means an insured bank or an association or savings bank insured by the Federal Savings and Loan Insurance Corporation;''.

Subsec. (f)(8)(C). Pub. L. 101–73, § 217(5)(H), redesignated subpar. (F) as (C). Former subpar. (C) redesignated (A).

Subsec. (f)(8)(D). Pub. L. 101–73, § 217(5)(H), redesignated subpar. (G) as (D) and struck out former subpar. (D) which read as follows: ''the term 'bank in danger of closing' means an insured bank with respect to which the appropriate Federal or State chartering authority certifies in writing that—

''(i)(I) the bank is not likely to be able to meet the demands of such bank's depositors or pay the obligations of the bank in the normal course of business, and

''(II) there is no reasonable prospect that the bank will be able to meet such demands or pay such obligations without Federal assistance; or

''(ii)(I) the bank has incurred or is likely to incur losses that will deplete all or substantially all of the capital of the bank, and

''(II) there is no reasonable prospect for the replenishment of the bank's capital without Federal assistance;''.

Subsec. (f)(8)(E) to (G). Pub. L. 101–73, § 217(5)(H), redesignated subpars. (E) to (G) as (B) to (D), respectively.

Subsec. (f)(9). Pub. L. 101–73, § 217(5)(I), substituted ''certain subsidiaries'' for ''nonbank subsidiaries'' in heading, ''subsidiary, other than a subsidiary that is an insured depository institution,'' for ''subsidiary'' and ''holding company'' for ''holding company which is not an insured bank'' in subpar. (A), and ''intermediate holding company or an affiliate of an insured depository institution'' for ''intermediate holding company'' in subpar. (B).

Subsec. (f)(12). Pub. L. 101–73, § 217(5)(J), added par. (12).

Subsec. (h). Pub. L. 101–73, § 217(6), substituted ''an insured depository institution in default'' for ''a closed insured depository institution'', ''default'' for ''closing'', and ''Bank Insurance Fund'' for ''insurance fund''.

Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (i)(1)(A). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' in three places.

Subsec. (i)(1)(C). Pub. L. 101–73, §217(7)(B), substituted ''Corporation'' for ''corporation'' where first appearing, ''chartered depository institution'' for ''chartered bank'', ''State member bank, a savings association,'' for ''State member bank'', and ''Federal Reserve System or the Director of the Office of Thrift Supervision'' for ''Federal Reserve System''.

Subsec. (i)(1)(D). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' in two places.

Subsec. (i)(2). Pub. L. 101–73, §217(7)(A), (C), inserted ''depository'' before ''institution'' in two places, and struck out ''or insured or guaranteed under State law'' after ''insured under this chapter''.

Subsec. (i)(3) to (9). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' wherever appearing.

Subsec. (i)(10). Pub. L. 101–73, §217(7)(D), struck out par. (10) which read as follows: ''Notwithstanding any other Federal or State law, net worth certificates purchased by the Corporation under this subsection shall be deemed to be net worth for statutory and regulatory purposes.''

Subsec. (i)(11). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution''.

Subsec. (i)(12). Pub. L. 101–73, §217(7)(D), struck out par. (12) which read as follows: ''The Corporation may provide assistance to a qualified institution which is not an insured institution only if the State fund which insures or guarantees the deposits of such qualified institution enters into an agreement with the Corporation which provides that—

''(A) the State fund will indemnify the Corporation for any losses which the Corporation may incur as a result of providing assistance under this subsection to such qualified institution; and

''(B) during any period when such qualified institution has outstanding capital instruments issued in accordance with this subsection, the State insurance fund maintains a level of assessments on its members which results in costs to its members which are at least equivalent to the premium assessments paid to the Corporation by insured institutions during such period.''

Subsec. (i)(13). Pub. L. 101–73, §217(7)(A), inserted ''depository'' before ''institution'' in two places.

Subsec. (k). Pub. L. 101–73, §217(8), added subsec. (k).

1987—Pub. L. 100–86, §509(a), repealed Pub. L. 97–320, §141. See 1982 Amendment notes below.

Subsec. (f)(1). Pub. L. 100–86, §502(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Nothing contained in paragraph (2) or (3) shall be construed to limit the Corporation's powers in subsection (c) of this section to assist a transaction under paragraph (2) or (3).''

Subsec. (f)(3). Pub. L. 100–86, §502(b), amended par. (3) generally, substituting subpars. (A) to (G) relating to emergency interstate acquisitions of insured banks in danger of closing for former subpars. (A) to (C) which authorized merger, purchase of assets, or assumption of liabilities of insured bank organized in mutual form with total assets of $500,000,000 or more upon Corporation's determination it was in danger of closing.

Subsec. (f)(4). Pub. L. 100–86, §502(c)(1), redesignated cls. (i) to (iii) as subpars. (A) to (C), amended subpar. (A) generally, and added subpars. (D) and (E). Prior to amendment, subpar. (A), as so redesignated, read as follows: ''Notwithstanding section 1842(d) of this title or any other provision of law, State or Federal, or the constitution of any State, an institution that merges with or acquires an insured bank under paragraph (2) or (3) is authorized to be and shall be operated as a subsidiary of an out-of-State bank or bank holding company, except that an out-of-State bank may operate the resulting institution as a subsidiary only if such ownership is otherwise specifically authorized.''

Subsec. (f)(5). Pub. L. 100–86, §502(i)(1), struck out ''to permit'' before ''an acquisition''.

Subsec. (f)(6)(A). Pub. L. 100–86, §502(i)(2), substituted ''where the bank'' for ''where the closed bank'' and ''in-State holding company'' for ''in-State bank holding company''.

Subsec. (f)(6)(B). Pub. L. 100–86, §502(c)(2)(A), added cls. (ii) to (vi) and struck out former cls. (ii) to (iv) which read as follows:

''(ii) Second, between depository institutions of the same type in different States;

''(iii) Third, between depository institutions of different types in the same State; and

''(iv) Fourth, between depository institutions of different types in different States.''

Subsec. (f)(6)(C). Pub. L. 100–86, §502(c)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''In considering offers from different States, the Corporation shall give a priority to offers from adjoining States.''

Subsec. (f)(8)(D) to (G). Pub. L. 100–86, §502(d)–(g), added subpars. (D) to (G).

Subsec. (f)(9) to (11). Pub. L. 100–86, §502(c)(3)–(5), added pars. (9) to (11).

Subsec. (j). Pub. L. 100–86, §801, added subsec. (j).

1983—Subsec. (i)(1)(D). Pub. L. 98–29 inserted provision that issuance of net worth certificates in accordance with this subsection shall not constitute a default under the terms of any debt obligations subordinated to the claims of general creditors which were outstanding when such net worth certificates were issued.

1983—Subsec. (c)(5)(A). Pub. L. 97–457, §1(a), inserted ''or dividends'' after ''interest''.

Subsec. (f)(1). Pub. L. 97–457, §4, substituted ''paragraph'' for ''paragraphs'' wherever appearing.

Subsec. (i)(9). Pub. L. 97–457, §10, inserted ''or dividends'' after ''interest''.

1982—Subsec. (c). Pub. L. 97–320, §111, substituted provisions contained in numbered pars. (1) through (8) relating to the Corporation's authority to assist insured banks for prior provisions contained in a single undesignated paragraph authorizing the Corporation, in order to reopen a closed insured bank or, when the Corporation had determined that an insured bank was in danger of closing, in order to prevent such closing, in the discretion of its Board of Directors, to make loans to, or purchase the assets of, or make deposits in, such insured bank, upon such terms and conditions as the Board of Directors might prescribe, when in the opinion of the Board of Directors the continued operation of such bank was essential to provide adequate banking service in the community, with such loans and deposits to be in subordination to the rights of depositors and other creditors.

Pub. L. 97–320, §141(a)(1), which directed the repeal of par. (5) effective Oct. 13, 1986, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (e). Pub. L. 97–320, §113(m)(2), inserted ''(e)'' before ''No agreement'' and struck out provision authorizing the Board of Directors, for the purpose of averting loss to the Corporation and facilitating a merger of an insured bank or facilitating the sale of an insured bank's assets and assumption of its liabilities by another insured bank, to make secured loans or to purchase the insured bank's assets or to guarantee another insured bank against loss by reason of its assuming the liabilities and purchasing the assets of an insured bank, and authorizing national or District banks or the Corporation as receiver thereof to contract for such sales or loans and to pledge assets to secure such loans.

Subsecs. (f) to (h). Pub. L. 97–320, §§113(m)(1), 116, added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Pub. L. 97–320, §141(a)(3), which directed that, effective Oct. 13, 1986, the provisions of law amended by section 116 of Pub. L. 97–320 shall be amended to read as they would without such amendment, was repealed by Pub. L. 100–86, §509(a). See Effective and Termination Dates of 1982 Amendment note and Extension of Emergency Acquisition and Net Worth Guarantee Provisions

of Pub. L. 97–320 note set out under section 1464 of this title.

Subsec. (i). Pub. L. 97–320, §§ 203, 206, added subsec. (i), relating to net worth certificates, and provided for its prospective repeal. See Effective Date of 1982 Amendment note below.

1978—Subsec. (g). Pub. L. 95–369 added subsec. (g).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 1(b) of Pub. L. 98–29 provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect on the date of enactment of the Garn-St Germain Depository Institutions Act of 1982 [Oct. 15, 1982].''

Section 1(b) of Pub. L. 97–457 provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97–320 [Oct. 15, 1982].''

Section 10(b) of Pub. L. 97–457 provided that: ''The amendment made by subsection (a) [amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97–320 [Oct. 15, 1982].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 206 of Pub. L. 97–320, as amended by Pub. L. 97–457, § 11, Jan. 12, 1983, 96 Stat. 2508; Pub. L. 99–120, § 6(b), Oct. 8, 1985, 99 Stat. 504; Pub. L. 99–278, § 1(b), Apr. 24, 1986, 100 Stat. 397; Pub. L. 99–400, § 1(b), Aug. 27, 1986, 100 Stat. 902; Pub. L. 99–452, § 1(b), Oct. 8, 1986, 100 Stat. 1140; Pub. L. 100–86, title V, § 509(b), Aug. 10, 1987, 101 Stat. 635, provided that:

''(a) On October 13, 1991, section 406(f)(5) of the National Housing Act [12 U.S.C. 1729(f)(5)] and section 13(i) of the Federal Deposit Insurance Act [12 U.S.C. 1823(i)] are repealed.

''(b) The repeal by subsection (a) shall have no effect on any action taken or authorized pursuant to the amendments made by this title [see Short Title of 1982 Amendments note set out under section 1811 of this title] by or for a qualified institution while such amendments were in effect and while net worth certificates issued pursuant to these amendments are outstanding.''

GAO COMPLIANCE AUDIT

Section 141(a)(2) of Pub. L. 102–242, as amended by Pub. L. 104–316, title I, § 106(b), Oct. 19, 1996, 110 Stat. 3830, provided that: ''The Comptroller General of the United States shall audit, under such conditions as the Comptroller General determines to be appropriate, the Federal Deposit Insurance Corporation and the Resolution Trust Corporation to determine the extent to which such corporations are complying with section 13(c)(4) of the Federal Deposit Insurance Act [12 U.S.C. 1823(c)(4)].''

EARLY RESOLUTION OF TROUBLED INSURED DEPOSITORY INSTITUTIONS

Section 143 of Pub. L. 102–242 provided that:

''(a) IN GENERAL.—It is the sense of the Congress that the Federal banking agencies should facilitate early resolution of troubled insured depository institutions whenever feasible if early resolution would have the least possible long-term cost to the deposit insurance fund, consistent with the least-cost and prompt corrective action provisions of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

''(b) GENERAL PRINCIPLES.—In encouraging the Federal banking agencies to pursue early resolution strategies, the Congress contemplates that any resolution transaction under section 13(c) of that Act [12 U.S.C. 1823(c)] would observe the following general principles:

''(1) COMPETITIVE NEGOTIATION.—The transaction should be negotiated competitively, taking into account the value of expediting the process.

''(2) RESULTING INSTITUTION ADEQUATELY CAPITALIZED.—Any insured depository institution created or assisted in the transaction (hereafter the 'resulting institution') and any institution acquiring the troubled institution should meet all applicable minimum capital standards.

''(3) SUBSTANTIAL PRIVATE INVESTMENT.—The transaction should involve substantial private investment.

''(4) CONCESSIONS.—Preexisting owners and debtholders of any troubled institution or its holding company should make substantial concessions.

''(5) QUALIFIED MANAGEMENT.—Directors and senior management of the resulting institution should be qualified to perform their duties, and should not include individuals substantially responsible for the troubled institution's problems.

''(6) FDIC'S PARTICIPATION.—The transaction should give the Federal Deposit Insurance Corporation an opportunity to participate in the success of the resulting institution.

''(7) STRUCTURE OF TRANSACTION.—The transaction should, insofar as practical, be structured so that—

''(A) the Federal Deposit Insurance Corporation—

''(i) does not acquire a significant proportion of the troubled institution's problem assets;

''(ii) succeeds to the interests of the troubled institution's preexisting owners and debtholders in proportion to the assistance the Corporation provides; and

''(iii) limits the Corporation's assistance in term and amount; and

''(B) new investors share risk with the Corporation.

''(c) REPORT.—Two years after the date of enactment of this Act [Dec. 19, 1991], the Federal Deposit Insurance Corporation shall submit a report to Congress analyzing the effect of early resolution on the deposit insurance funds.''

EXTENSION OF EMERGENCY ACQUISITION AND NET WORTH GUARANTEE PROVISIONS OF PUB. L. 97–320

No amendment made by section 141(a) of Pub. L. 97–320, set out as a note under section 1464 of this title, or section 206(a) of Pub. L. 97–320, set out as a note above, as in effect before Aug. 10, 1987, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had been made before such date, see section 509(c) of Pub. L. 100–86, set out as a note under section 1464 of this title.

No amendment made by section 141(a) or section 206(a) of Pub. L. 97–320, set out as notes under sections 1464 and 1729 of this title, respectively, as in effect on the day before Oct. 8, 1986, to any other provision of law to be deemed to have taken effect before such date and any such provision of law to be in effect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99–452, set out as a note under section 1464 of this title.

Sections 141(a) and 206(a) of Pub. L. 97–320, which are set out as notes under sections 1464 and 1729 of this title, as such sections were in effect on the day after Aug. 27, 1986, applicable as if such sections had been included in Pub. L. 97–320 on Oct. 15, 1982, with no amend-

ment made by any such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99–400, set out as a note under section 1464 of this title.

ANNUAL REPORTS TO CONGRESS BY FEDERAL HOME LOAN BANK BOARD AND FEDERAL DEPOSIT INSURANCE CORPORATION ON PURCHASES OF NET WORTH CERTIFICATES

Section 204 of Pub. L. 97–320 provided that: ''The Federal Home Loan Bank Board and the Board of Directors of the Federal Deposit Insurance Corporation shall each transmit an annual report to each House of the Congress specifying the types and amounts of net worth certificates purchased from each depository institution and the conditions imposed on each such depository institution.''

[For termination, effective May 15, 2000, of reporting provisions relating to the Federal Deposit Insurance Corporation in section 204 of Pub. L. 97–320, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 167 of House Document No. 103–7.]

SEMIANNUAL AUDIT BY COMPTROLLER GENERAL OF NET WORTH CERTIFICATE PROGRAMS OF FEDERAL DEPOSIT INSURANCE CORPORATION AND FEDERAL HOME LOAN BANK BOARD

Section 205 of Pub. L. 97–320 provided that: ''The Comptroller General of the United States shall conduct on a semiannual basis an audit of the net worth certificate programs of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board. A report on each such audit shall be transmitted to each House of the Congress.''

[For termination, effective May 15, 2000, of reporting provisions in section 205 of Pub. L. 97–320, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 3 of House Document No. 103–7.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 43, 1441a, 1464, 1467a, 1817, 1820, 1821, 1828, 1831*o*, 1831r, 1831r–1, 1831u, 1842, 1843, 1849, 2605 of this title; title 18 section 1032; title 26 section 597.

§ 1824. Borrowing authority

(a) Borrowing from Treasury

The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are from time to time required for insurance purposes, not exceeding in the aggregate $30,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury: *Provided*, That the rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. For such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include such loans. Any such loan shall be used by the Corporation solely in carrying out its functions with respect to such insurance. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States. The Corporation may employ any funds obtained under this section for purposes of the Bank Insurance Fund or the Savings Association Insurance Fund and the borrowing shall become a liability of each such fund to the extent funds are employed therefor. There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this subsection.

(b) Borrowing from Federal Financing Bank

The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Bank Insurance Fund or Savings Association Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973 [12 U.S.C. 2281 et seq.]. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 1825(c) of this title. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

(c) Repayment schedules required for any borrowing

(1) In general

No amount may be provided by the Secretary of the Treasury to the Corporation under subsection (a) of this section unless an agreement is in effect between the Secretary and the Corporation which—

(A) provides a schedule for the repayment of the outstanding amount of any borrowing under such subsection; and

(B) demonstrates that income to the Corporation from assessments under this chapter will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

(2) Consultation with and report to Congress

The Secretary of the Treasury and the Corporation shall—

(A) consult with the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement described in paragraph (1) relating to repayment, including terms relating to any emergency special assessment under section 1817(b)(7) of this title; and

(B) submit a copy of each repayment schedule agreement entered into under paragraph (1) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under subsection (a) of this section.

(3) Industry repayment

(A) BIF member payments

No agreement or repayment schedule under paragraph (1) shall require any payment by a Bank Insurance Fund member for funds obtained under subsection (a) of this section for purposes of the Savings Association Fund.

(B) SAIF member payments

No agreement or repayment schedule under paragraph (1) shall require any payment by a Savings Association Insurance Fund member for funds obtained under subsection (a) of this section for purposes of the Bank Insurance Fund.

(d) Borrowing for BIF from BIF members

(1) Borrowing authority

The Corporation may issue obligations to Bank Insurance Fund members, and may borrow from Bank Insurance Fund members and give security for any amount borrowed, and may pay interest on (and any redemption premium with respect to) any such obligation or amount to the extent—

(A) the proceeds of any such obligation or amount are used by the Corporation solely for purposes of carrying out the Corporation's functions with respect to the Bank Insurance Fund; and

(B) the terms of the obligation or instrument limit the liability of the Corporation or the Bank Insurance Fund for the payment of interest and the repayment of principal to the amount which is equal to the amount of assessment income received by the Fund from assessments under section 1817 of this title.

(2) Limitations on borrowing

(A) Applicability of public debt limit

For purposes of the public debt limit established in section 3101(b) of title 31, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an obligation to which such limit applies.

(B) Applicability of FDIC borrowing limit

For purposes of the dollar amount limitation established in subsection (a) of this section, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an amount borrowed from the Treasury under such subsection.

(C) Interest rate limit

The rate of interest payable in connection with any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall not exceed an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(D) Obligations to be held only by BIF members

The terms of any obligation issued by the Corporation under paragraph (1) shall provide that the obligation will be valid only if held by a Bank Insurance Fund member.

(3) Liability of BIF

Any obligation issued or amount borrowed under paragraph (1) shall be a liability of the Bank Insurance Fund.

(4) Terms and conditions

Subject to paragraphs (1) and (2), the Corporation shall establish the terms and conditions for obligations issued or amounts borrowed under paragraph (1), including interest rates and terms to maturity.

(5) Investment by BIF members

(A) Authority to invest

Subject to subparagraph (B) and notwithstanding any other provision of Federal law or the law of any State, any Bank Insurance Fund member may purchase and hold for investment any obligation issued by the Corporation under paragraph (1) without limitation, other than any limitation the appropriate Federal banking agency may impose specifically with respect to such obligations.

(B) Investment only from capital and retained earnings

Any Bank Insurance Fund member may purchase obligations or make loans to the Corporation under paragraph (1) only to the extent the purchase money or the money loaned is derived from the member's capital or retained earnings.

(6) Accounting treatment

In accounting for any investment in an obligation purchased from, or any loan made to, the Corporation for purposes of determining compliance with any capital standard and preparing any report required pursuant to section 1817(a) of this title, the amount of such investment or loan shall be treated as an asset.

(Sept. 21, 1950, ch. 967, § 2[14], 64 Stat. 890; Pub. L. 101–73, title II, § 218, Aug. 9, 1989, 103 Stat. 261; Pub. L. 101–508, title II, § 2005, Nov. 5, 1990, 104 Stat. 1388–16; Pub. L. 102–242, title I, §§ 101, 103(a), 105, Dec. 19, 1991, 105 Stat. 2236, 2237, 2239; Pub. L. 102–550, title XVI, § 1603(a)(2), Oct. 28, 1992, 106 Stat. 4078; Pub. L. 103–204, § 10, Dec. 17, 1993, 107 Stat. 2389; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(N)–(Q), Sept. 30, 1996, 110 Stat. 3009–493.)

REFERENCES IN TEXT

The Federal Financing Bank Act of 1973, referred to in subsec. (b), is Pub. L. 93–224, Dec. 29, 1973, 87 Stat. 937, as amended, which is classified generally to chapter 24 (§ 2281 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2281 of this title and Tables.

CODIFICATION

''Chapter 31 of title 31'' substituted in subsec. (a) for ''the Second Liberty Bond Act, as amended'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Section is derived from subsec. (*o*) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2704(d)(14)(N), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or the Savings Association Insurance Fund'' and ''the Deposit Insurance Fund'' for ''each such fund'' in fifth sentence, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (b). Pub. L. 104–208, § 2704(d)(14)(O), which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund or Savings Association Insurance Fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (c)(3). Pub. L. 104–208, § 2704(d)(14)(P), which directed striking out par. (3), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d). Pub. L. 104–208, § 2704(d)(14)(Q), which directed substitution of ''DIF'' for ''BIF'' and ''Deposit Insurance Fund'' for ''Bank Insurance Fund'' wherever appearing, was not executed. See Effective Date of 1996 Amendment note below.

1993—Subsec. (c)(3). Pub. L. 103–204 added par. (3).

1992—Subsec. (d)(2)(D). Pub. L. 102–550 substituted ''member'' for ''Member''.

1991—Subsec. (a). Pub. L. 102–242, § 101, substituted ''$30,000,000,000'' for ''$5,000,000,000''.

Subsec. (c). Pub. L. 102–242, § 103(a), added subsec. (c).

Subsec. (d). Pub. L. 102–242, § 105, added subsec. (d).

1990—Pub. L. 101–508 inserted section catchline, designated existing provisions as subsec. (a), inserted heading, substituted ''this subsection'' for ''this section'' wherever appearing, substituted ''The Corporation may employ any funds obtained under this section'' for ''The Corporation may employ such funds'', and added subsec. (b).

1989—Pub. L. 101–73 substituted ''$5,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury'' for ''$3,000,000,000 outstanding at any one time'', substituted ''an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities'' for ''the current average rate on outstanding marketable and nonmarketable obligations of the United States as of the last day of the month preceding the making of such loan'', and inserted at end ''The Corporation may employ such funds for purposes of the Bank Insurance Fund or the Savings Association Insurance Fund and the borrowing shall become a liability of each such fund to the extent funds are employed therefor. There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this section.''

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

RETIREMENT AND CANCELLATION OF CAPITAL STOCK; PAYMENTS OF CAPITAL AND SURPLUS TO SECRETARY OF THE TREASURY

Section 1 of act Aug. 5, 1947, ch. 492, 61 Stat. 773, directed the Federal Deposit Insurance Corporation to retire its capital stock by paying the amount received therefor (whether received from the Secretary of the Treasury or the Federal Reserve banks) to the Secretary of the Treasury, to be covered into the Treasury as miscellaneous receipts, with the Corporation to pay to the Secretary so much of its capital and surplus as is in excess of $1,000,000,000, the balance of the amount to be paid to the Secretary in units of $10,000,000 except that the last unit to be paid could be less than $10,000,000.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1817, 1821, 1825, 2712 of this title.

§ 1825. Issuance of notes, debentures, bonds, and other obligations; exemption from taxation

(a) General rule

All notes, debentures, bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority: *Provided*, That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. The Corporation, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(b) Other exemptions

When acting as a receiver, the following provisions shall apply with respect to the Corporation:

(1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(2) No property of the Corporation shall be subject to levy, attachment, garnishment,

foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation.

(3) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

This subsection shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(c) Limitation on borrowing

(1) Cost estimate for outstanding obligations, guarantees, and liabilities

As soon as practicable after August 9, 1989, the Corporation shall estimate the aggregate cost to the Corporation for all outstanding obligations and guarantees of the Corporation which were issued, and all outstanding liabilities which were incurred, by the Corporation before August 9, 1989.

(2) Estimate of notes and other obligations required

Before issuing an obligation or making a guarantee, the Corporation shall estimate the cost of such obligations or guarantees.

(3) Inclusion of estimates in financial statements

The Corporation shall—

(A) reflect in its financial statements the estimates made by the Corporation under paragraphs (1) and (2) of the aggregate amount of the costs to the Corporation for outstanding obligations and other liabilities, and

(B) make such adjustments as are appropriate in the estimate of such aggregate amount not less frequently than quarterly.

(4) Estimate of other assets required

The Corporation shall—

(A) estimate the market value of assets held by it as a result of case resolution activities, with a reduction for expenses expected to be incurred by the Corporation in connection with the management and sale of such assets;

(B) reflect the amounts so estimated in its financial statements; and

(C) make such adjustments as are appropriate of such market value not less than quarterly.

(5) Maximum amount limitation on outstanding obligations

Notwithstanding any other provisions of this chapter, the Corporation may not issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of obligations of the Bank Insurance Fund or Savings Association Insurance Fund, respectively, outstanding would exceed the sum of—

(A) the amount of cash or the equivalent of cash held by the Bank Insurance Fund or Savings Association Insurance Fund, respectively;

(B) the amount which is equal to 90 percent of the Corporation's estimate of the fair market value of assets held by the Bank Insurance Fund or the Savings Association Insurance Fund, respectively, other than assets described in subparagraph (A); and

(C) the total of the amounts authorized to be borrowed from the Secretary of the Treasury pursuant to section 1824(a) of this title.

(6) "Obligation" defined

(A) In general

For purposes of paragraph (5), the term ''obligation'' includes—

(i) any guarantee issued by the Corporation, other than deposit guarantees;

(ii) any amount borrowed pursuant to section 1824 of this title; and

(iii) any other obligation for which the Corporation has a direct or contingent liability to pay any amount.

(B) Valuation of contingent liabilities

The Corporation shall value any contingent liability at its expected cost to the Corporation.

(d) Full faith and credit

The full faith and credit of the United States is pledged to the payment of any obligation issued after August 9, 1989, by the Corporation, with respect to both principal and interest, if—

(1) the principal amount of such obligation is stated in the obligation; and

(2) the term to maturity or the date of maturity of such obligation is stated in the obligation.

(Sept. 21, 1950, ch. 967, § 2[15], 64 Stat. 890; Pub. L. 101–73, title II, § 219, Aug. 9, 1989, 103 Stat. 261; Pub. L. 102–242, title I, § 102(a), (c), Dec. 19, 1991, 105 Stat. 2236, 2237; Pub. L. 103–325, title VI, § 602(a)(43), Sept. 23, 1994, 108 Stat. 2290; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(R), Sept. 30, 1996, 110 Stat. 3009–493.)

REFERENCES IN TEXT

The Internal Revenue Code, referred to in subsecs. (a) and (b), is classified to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

Section is derived from subsec. (p) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1996—Subsec. (c)(5). Pub. L. 104–208, which directed substitution of ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund or Savings Association Insurance Fund, respectively'' in introductory provisions and in subpar. (A) and ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund or the Savings Association Insurance Fund, respectively'' in subpar. (B), was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (c)(1). Pub. L. 103–325 substituted ''OBLIGATIONS, GUARANTEES, AND LIABILITIES'' for ''OBLIGATIONS LIABILITIES'' in heading.

1991—Subsec. (c)(5), (6). Pub. L. 102–242, § 102(a), added pars. (5) and (6) and struck out former par. (5) which provided for a 10-percent-minimum net worth requirement for Bank Insurance Fund or Savings Association Insurance Fund and former par. (6) which provided exception for up to $5,000,000,000 in additional liabilities beyond limitations of par. (5).

Subsec. (c)(7). Pub. L. 102–242, § 102(c), struck out par. (7) which provided for calculation of net worth and

asset valuation of Bank Insurance Fund and the Savings Association Insurance Fund for purposes of par. (5).

1989—Subsec. (a). Pub. L. 101–73 designated existing provision as subsec. (a), inserted heading, and added subsecs. (b) to (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

GAO REPORTS

Section 102(b) of Pub. L. 102–242, as amended by Pub. L. 103–325, title III, § 327, Sept. 23, 1994, 108 Stat. 2230; Pub. L. 104–66, title II, § 2061, Dec. 21, 1995, 109 Stat. 729, directed Comptroller General to submit report to congressional committees, not later than 90 days after end of any calendar quarter in which Federal Deposit Insurance Corporation had any outstanding obligations pursuant to section 1824 of this title, on Corporation's compliance at the end of that quarter with subsec. (c) of this section, prior to repeal by Pub. L. 104–316, title I, § 106(c), Oct. 19, 1996, 110 Stat. 3831.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1823, 1824, 1827 of this title; title 26 section 597.

§ 1826. Forms of obligations; preparation by Secretary of the Treasury

In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this chapter, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the Treasury subject to delivery, upon order of the Corporation. The engraved plates, dies, bed pieces, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other such obligations.

(Sept. 21, 1950, ch. 967, § 2[16], 64 Stat. 890.)

PRIOR PROVISIONS

Section is derived from subsec. (q) of former section 264 of this title. See Codification note set out under section 1811 of this title.

§ 1827. Reports by Corporation; audit of financial transactions; report on audits; employment of certified public accountants for audits

(a) Annual reports on BIF, SAIF, and the FSLIC Resolution Fund

(1) In general

The Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, an analysis by the Corporation of—

(A) the current financial condition of each such fund;

(B) the purpose, effect, and estimated cost of each resolution action taken for an insured depository institution during the preceding year;

(C) the extent to which the actual costs of assistance provided to, or for the benefit of, an insured depository institution during the preceding year exceeded the estimated costs of such assistance reported in a previous year under paragraph (A);

(D) the exposure of each insurance fund to changes in those economic factors most likely to affect the condition of that fund;

(E) a current estimate of the resources needed for the Bank Insurance Fund, the Savings Association Insurance Fund, or the FSLIC Resolution Fund to achieve the purposes of this chapter; and

(F) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future resolution activities by the Corporation.

(2) Manner of submission

Such report shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and the President as soon as practicable after the first day of January each year.

(3) Coordination with other report requirements

The report required under this subsection shall include the report required under section 57a(f)(7) of title 15.

(b) Quarterly reports to Treasury

(1) Financial operating plans and forecasts

Before the beginning of each fiscal quarter, the Corporation shall provide to the Secretary of the Treasury a copy of the Corporation's financial operating plans and forecasts.

(2) Financial condition and reports of operations

As soon as practicable after the end of each fiscal quarter, the Corporation shall submit to the Secretary of the Treasury a copy of the report of the Corporation's financial condition as of the end of such fiscal quarter and the results of the Corporation's operations during such fiscal quarter.

(3) Items to be included

The plans, forecasts, and reports required under this subsection shall reflect the estimates required to be made under section 1825(b) of this title of the liabilities and obligations of the Corporation described in such section.

(4) Rule of construction

The requirement to provide plans, forecasts, and reports to the Secretary of the Treasury under this subsection may not be construed as implying any obligation on the part of the Corporation to obtain the consent or approval of such Secretary with respect to such plans, forecasts, and reports.

(c) Reports to OMB

(1) Financial information

The Corporation shall continue to provide to the Director of the Office of Management and

Budget financial information consistent with that contained in the reports that were being provided to the Director immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) Financial operating plans and forecasts

The Corporation shall also provide to the Director copies of the Corporation's financial operating plans and forecasts as prepared by the Corporation in the ordinary course of its operations, and copies of the quarterly reports of the Corporation's financial condition and results of operations as prepared by the Corporation in the ordinary course of its operations.

(3) Rule of construction

This subsection may not be construed as implying any obligation on the part of the Corporation to consult with or obtain the consent or approval of the Director with respect to any reports, plans, forecasts, or other information referred to in paragraph (1) or (2) or any jurisdiction or oversight over the affairs or operations of the Corporation.

(d) Audit

(1) Audit required

The Comptroller General shall audit annually the financial transactions of the Corporation, the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund in accordance with generally accepted government auditing standards.

(2) Access to books and records

All books, records, accounts, reports, files, and property belonging to or used by the Corporation, the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the Comptroller General.

(e) Audit of Corporation

The financial transactions of the Corporation shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in possession and custody of the Corporation. The audit shall begin with financial transactions occurring on and after August 31, 1948. The Corporation shall be audited at least once in every three years.

(f) Report of audit

A report of each audit conducted under subsection (b) of this section shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last year covered by such audit. The report to the Congress shall set forth the scope of the audit and shall include a statement of assets and liabilities and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expenses; a statement of sources and application of funds and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the Corporation at the time submitted to the Congress.

(g) Assistance in audit; costs

For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ by contract, without regard to section 5 of title 41, professional services of firms and organizations of certified public accountants, with the concurrence of the Corporation, for temporary periods or for special purposes. The Corporation shall reimburse the General Accounting Office for the cost of any such audit as billed therefor by the Comptroller General, and the General Accounting Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts.

(Sept. 21, 1950, ch. 967, § 2[17], 64 Stat. 890; Pub. L. 93–604, title VI, § 602, Jan. 2, 1975, 88 Stat. 1963; Pub. L. 101–73, title II, § 220(a), Aug. 9, 1989, 103 Stat. 263; Pub. L. 102–242, title IV, § 427, Dec. 19, 1991, 105 Stat. 2378; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(S), (T), Sept. 30, 1996, 110 Stat. 3009–493, 3009–494; Pub. L. 106–569, title XI, §§ 1103(a), 1104(b), Dec. 27, 2000, 114 Stat. 3030, 3032.)

REFERENCES IN TEXT

The effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 101–73, which was approved Aug. 9, 1989.

PRIOR PROVISIONS

Subsec. (a) is derived from subsec. (r) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106–569, § 1103(a), added par. (3).

Subsec. (h). Pub. L. 106–569, § 1104(b), struck out subsec. (h) which related to additional reports.

1996—Subsec. (a). Pub. L. 104–208, § 2704(d)(14)(S), which directed substitution of "the Deposit Insurance Fund" for "BIF, SAIF," in heading and "the Deposit Insurance Fund" for "the Bank Insurance Fund, the Savings Association Insurance Fund," wherever ap-

pearing in par. (1), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d). Pub. L. 104–208, § 2704(d)(14)(T), which directed substitution of ''the Deposit Insurance Fund'' for ''the Bank Insurance Fund, the Savings Association Insurance Fund,'' in two places, was not executed. See Effective Date of 1996 Amendment note below.

1991—Subsec. (h). Pub. L. 102–242 added subsec. (h).

1989—Subsec. (a). Pub. L. 101–73, § 220(a)(1), added heading and text and struck out former subsec. (a) which read as follows: ''The Corporation shall annually make a report of its operations to the Congress as soon as practicable after the 1st day of January in each year.''

Subsecs. (b) to (g). Pub. L. 101–73, § 220(a)(2), (3), added subsecs. (b) to (d) and redesignated former subsecs. (b) to (d) as (e) to (g), respectively.

1975—Subsec. (b). Pub. L. 93–604, § 602(a), inserted provisions that the Corporation shall be audited at least once in every three years.

Subsec. (c). Pub. L. 93–604, § 602(b), substituted provisions that a report of each audit conducted under subsec. (b) of this section shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of previous year covered by such audit, for provisions that a report of the audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than Jan. 15 following the close of such fiscal year.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

FINAL REPORTS ON RTC AND SAIF FUNDING

Pub. L. 103–204, § 28, Dec. 17, 1993, 107 Stat. 2410, provided that:

''(a) IN GENERAL.—

''(1) RTC REPORT.—The Chairperson of the Thrift Depositor Protection Oversight Board shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a final report containing a detailed description of the purposes for which the funds made available to the Resolution Trust Corporation under this Act [See Short Title of 1993 Amendment note set out under section 1421 of this title] were used.

''(2) SAIF REPORT.—The Chairperson of the Federal Deposit Insurance Corporation shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a final report containing a detailed description of the purposes for which the funds made available to the Savings Association Insurance Fund under this Act were used.

''(b) TIME FOR SUBMISSION.—The reports described in subsection (a) shall be transmitted—

''(1) not later than 45 days after the final expenditure of funds provided for under this Act by the Resolution Trust Corporation; and

''(2) not later than 45 days after the final expenditure of funds authorized to be provided under this Act by the Savings Association Insurance Fund.''

REPORT TO CONGRESS ON RISK-BASED ASSESSMENTS

Section 220(b)(1) of Pub. L. 101–73 directed Federal Deposit Insurance Corporation to study establishment of premium assessment categories related to types of risk to insurance funds and report its recommendations to Congress not later than Jan. 1, 1991; if Corporation recommended establishment of such a risk-based assessment plan, it was to provide a timetable and plan for implementation; and not later than 180 days after receipt of report and accompanying plan and timetable, Congress was to make a recommendation to Chairperson of Board of Directors regarding disposition of such plan and timetable.

§ 1828. Regulations governing insured depository institutions

(a) Insurance logo

(1) Insured savings associations

Each insured savings association shall display at each place of business maintained by such association a sign containing only the following items:

(A) A statement that insured deposits are backed by the full faith and credit of the United States Government.

(B) A statement that deposits are federally insured to $100,000.

(C) The symbol of an eagle.

The sign shall not contain any reference to a Government agency and shall accord each item substantially equal prominence.

(2) Insured banks

Not later than 30 days after August 9, 1989, each insured bank shall display at each place of business maintained by such bank one of the following:

(A) The sign required to be displayed by insured banks under regulations prescribed by the Corporation in effect on January 1, 1989.

(B) The sign prescribed under paragraph (1).

(3) Regulations

The Corporation shall prescribe regulations to carry out the purposes of this subsection, including regulations governing the manner of display or use of such signs, except that the size of the sign prescribed under paragraph (1) shall be similar to that prescribed under paragraph (2)(A). Initial regulations under this subsection shall be prescribed on August 9, 1989.

For each day an insured depository institution continues to violate any provisions of this subsection or any lawful provisions of said regulations, it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

(b) Payment of dividends by defaulting depository institutions

No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both: *Provided*, That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply if the insured depository institu-

tion deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(c) Merger transactions; consent of banking agencies; emergency approval; notice; uniform standards; antitrust actions; review de novo; limitations; report to Congress; applicability

(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be ''deposits'' except for the proviso in section 1813(*l*)(5) of this title) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank);

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank (except a District bank or a savings bank supervised by the Director of the Office of Thrift Supervision); and

(D) the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a ''merger transaction'') shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other Federal banking agencies that an emergency exists requiring expeditious action. Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction 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 business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to 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 transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks or savings associations involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other Federal banking agencies of the existence of an emergency requiring expeditious actions and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the At-

torney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a part of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term ''antitrust laws'' means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved;

(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

(C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(d) Branch banks

(1) No State nonmember insured bank (except a District bank) shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank (except a District bank) shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 1816 of this title.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(3) EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES.—

(A) IN GENERAL.—Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in section 1831u(f)(4)[1] of this title) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 1823(f), 1823(k), or 1831u of this title.

(B) RETENTION OF BRANCHES.—In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in section 1831u(f)(4)[1] of this title) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if—

(i) the bank had no branches in such State; or

(ii) the branch resulted from—

(I) an interstate merger transaction approved pursuant to section 1831u of this title; or

(II) a transaction after May 31, 1997, pursuant to which the bank received assist-

[1] See References in Text note below.

ance from the Corporation under section 1823(c) of this title.

(4) STATE ''OPT-IN'' ELECTION TO PERMIT INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if—

(i) there is in effect in the host State a law that—

(I) applies equally to all banks; and

(II) expressly permits all out-of-State banks to establish de novo branches in such State; and

(ii) the conditions established in, or made applicable to this paragraph by, subparagraph (B) are met.

(B) CONDITIONS ON ESTABLISHMENT AND OPERATION OF INTERSTATE BRANCH.—

(i) ESTABLISHMENT.—An application by an insured State nonmember bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for a merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(ii) OPERATION.—Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch of an insured State nonmember bank which is established and operated pursuant to an application approved under this paragraph in the same manner and to the same extent such provisions of such section apply to a branch of a State bank which resulted from a merger transaction under such section 1831u of this title.

(C) ''DE NOVO BRANCH'' DEFINED.—For purposes of this paragraph, the term ''de novo branch'' means a branch of a State bank which—

(i) is originally established by the State bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(D) ''HOME STATE'' DEFINED.—The term ''home State'' means the State by which a State bank is chartered.

(E) ''HOST STATE'' DEFINED.—The term ''host State'' means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(e) Indemnity insurance

The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.[2]

(f) Publication of reports

Whenever any insured depository institution (except a national bank or a District bank), after written notice of the recommendations of the Corporation based on a report of examination of such insured depository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: *Provided*, That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

(g) Interest or dividend on demand deposits; definitions; regulation of interest rates

(1) The Board of Directors shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks and for such purpose it may define the term ''demand deposits''; but such exceptions from this prohibition shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System. The Board of Directors may from time to time, after consulting with the Board of Governors of the Federal Reserve System and the Director of the Office of Thrift Supervision, prescribe rules governing the advertisement of interest or dividends on deposits by insured nonmember banks (including insured mutual savings banks) on time and savings deposits. The Board of Directors is authorized for the purposes of this subsection to define the terms ''time deposits'' and ''savings deposits'', to determine what shall be deemed a payment of interest, and to prescribe such regulations as it may deem necessary to effectuate the purposes of this subsection and to prevent evasions thereof. The provisions of this subsection and of regulations issued thereunder shall also apply, in the discretion of the Board of Directors, to obligations other than deposits that are undertaken by insured nonmember banks or their affiliates. As used in this subsection, the term ''affiliate'' has the same meaning as when used in section 221a(b) of this title, except that the term ''member bank'', as used in such section 221a(b), shall be deemed to refer to an insured nonmember bank. During the period commencing on October 15, 1962, and ending on October 15, 1968, the provisions of this subsection shall not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member. The authority

[2] So in original. Probably should be ''insured depository institution''.

conferred by this subsection shall also apply to noninsured banks in any State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks, and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State. Such authority shall only be exercised by the Board of Directors with respect to such noninsured banks prior to July 31, 1970, to limit the rates of interest or dividends which such banks may pay on time and savings deposits to maximum rates not lower than 5½ per centum per annum. Whenever it shall appear to the Board of Directors that any noninsured bank or any affiliate thereof 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 subsection or of any regulations thereunder, the Board of Directors may, in its discretion, bring an action in the United States district court for the judicial district in which the principal office of the noninsured bank or affiliate thereof is located to enjoin such acts or practices, to enforce compliance with this subsection or any regulations thereunder, or for a combination of the foregoing, and such courts shall have jurisdiction of such actions, and, upon a proper showing, an injunction, restraining order, or other appropriate order may be granted without bond.

(2) Notwithstanding the provisions of paragraph (1), an insured nonmember bank may permit withdrawals to be made automatically from a savings deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank, pursuant to terms and conditions prescribed by the Board of Directors.

(h) Penalties

Any insured depository institution which willfully fails or refuses to file any certified statement or pay any assessment required under this chapter shall be subject to a penalty of not more than $100 for each day that such violations continue, which penalty the Corporation may recover for its use: *Provided*, That this subsection shall not be applicable under the circumstances stated in the proviso of subsection (b) of this section.

(i) Reduction or retirement of capital stock, notes, or debentures; conversion of insured Federal depository institutions to insured State banks or noninsured institutions; consent of banking agencies; applicability

(1) No insured State nonmember bank (except a District bank) shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Comptroller of the Currency if the resulting bank is to be a District bank;

(B) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank (except a District bank);

(C) the Corporation if the resulting bank is to be a State nonmember insured bank (except a District bank); and

(D) the Director of the Office of Thrift Supervision if the resulting institution is to be an insured State savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider—

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character and fitness of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this chapter.

(j) Restrictions on transactions with affiliates and insiders

(1) Transactions with affiliates

(A) In general

Sections 371c and 371c–1 of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(B) "Affiliate" defined

For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 371c and 371c–1 of this title) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

(2) Extensions of credit to officers, directors, and principal shareholders

Sections 375a and 375b of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(3) Avoiding extraterritorial application to foreign banks

(A) Transactions with affiliates

Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

(B) Extensions of credit to officers, directors, and principal shareholders

Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

(C) "Foreign bank" defined

For purposes of this paragraph, the term ''foreign bank'' has the same meaning as in section 3101(7) of this title.

(k) Authority to regulate or prohibit certain forms of benefits to institution-affiliated parties

(1) Golden parachutes and indemnification payments

The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

(2) Factors to be taken into account

The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18; or

(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or depository institution holding company and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) Certain payments prohibited

No insured depository institution or depository institution holding company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such institution or holding company or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

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

(ii) preferring one creditor over another.

(4) "Golden parachute payment" defined

For purposes of this subsection—

(A) In general

The term ''golden parachute payment'' means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or depository institution holding company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or holding company that—

(i) is contingent on the termination of such party's affiliation with the institution or holding company; and

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

(I) the insured depository institution or depository institution holding company, or any insured depository institution subsidiary of such holding company, is insolvent;

(II) any conservator or receiver is appointed for such institution;

(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title);

(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or

(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

(B) Certain payments in contemplation of an event

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) Certain payments not included

The term ''golden parachute payment'' shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is in-

tended to be qualified) under section 401 of title 26 or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

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

(5) Other definitions

For purposes of this subsection—

(A) Indemnification payment

Subject to paragraph (6), the term ''indemnification payment'' means any payment (or any agreement to make any payment) by any insured depository institution or depository institution holding company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 1818(b)(6) of this title with respect to such institution.

(B) Liability or legal expense

The term ''liability or legal expense'' means—

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

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

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) Payment

The term ''payment'' includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

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

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

(6) Certain commercial insurance coverage not treated as covered benefit payment

No provision of this subsection shall be construed as prohibiting any insured depository institution or depository institution holding company from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or holding company which is described in paragraph (5)(A).

(*l*) Acquisition of foreign banks or entities

When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) Activities of savings associations and their subsidiaries

(1) Procedures

When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

(A) shall notify the Corporation and the Director of the Office of Thrift Supervision not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations and orders of the Director of the Office of Thrift Supervision.

(2) Enforcement powers

With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Director of the Office of Thrift Supervision shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 1818 of this title; and

(B) the Director of the Office of Thrift Supervision may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary—

(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

(ii) is inconsistent with sound banking principles or with the purposes of this chapter.

Upon making any such determination, the Corporation or the Director of the Office of Thrift Supervision shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Director of the Office of Thrift Supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.

(3) Activities incompatible with deposit insurance

(A) In general

The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Savings Association Insurance Fund. Prior to adopting any such regulation, the Corporation shall consult with the Director of the Office of Thrift Supervision and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no Savings Association Insurance Fund member may engage in the activity directly.

(B) Authority of Director

This section does not limit the authority of the Office of Thrift Supervision to issue regulations to promote safety and soundness or to enforce compliance with other applicable laws.

(C) Additional authority of FDIC to prevent serious risks to insurance fund

Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Savings Association Insurance Fund or the Bank Insurance Fund.

(4) "Subsidiary" defined

As used in this subsection, the term ''subsidiary'' does not include an insured depository institution.

(5) Applicability to certain savings banks

Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

(n) Calculation of capital

No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 1464(t) of this title.

(*o*) Real estate lending

(1) Uniform regulations

Not more than 9 months after December 19, 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

(A) secured by liens on interests in real estate; or

(B) made for the purpose of financing the construction of a building or other improvements to real estate.

(2) Standards

(A) Criteria

In prescribing standards under paragraph (1), the agencies shall consider—

(i) the risk posed to the deposit insurance funds by such extensions of credit;

(ii) the need for safe and sound operation of insured depository institutions; and

(iii) the availability of credit.

(B) Variations permitted

In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

(i) as may be required by Federal statute;

(ii) as may be warranted, based on the risk to the deposit insurance fund; or

(iii) as may be warranted, based on the safety and soundness of the institutions.

(3) Loan evaluation standard

No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution's safety and soundness.

(4) Effective date

The regulations adopted under paragraph (1) shall become effective not later than 15 months after December 19, 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

(p) Periodic review of capital standards

Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the deposit insurance funds, consistent with section 1831*o* of this title.

(q) Sovereign risk

Section 633 of this title shall apply to every nonmember insured bank in the same manner

and to the same extent as if the nonmember insured bank were a member bank.

(r) Subsidiary depository institutions as agents for certain affiliates

(1) In general

Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) Bank acting as agent is not a branch

Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) Prohibitions on activities

A depository institution may not—

(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

(4) Existing authority not affected

No provision of this subsection shall be construed as affecting—

(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

(5) Agency relationship required to be consistent with safe and sound banking practices

An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

(6) Affiliated insured savings associations

An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—

(A) any State in which—

(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

(B) any State in which—

(i) the bank is not expressly prohibited from operating a branch under a State law described in section 1831u(a)(2) of this title; and

(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

(s) Prohibition on certain affiliations

(1) In general

No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) Exception for members of a Federal home loan bank

Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

(3) Routine business financing

Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

(4) Student loans

(A) In general

This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that—

(i) the reorganization of such Association in accordance with section 1087–3 of title 20 will not be adversely affected by the arrangement;

(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: *Provided*, That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years;

(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

(iv) the operations of the Association will be separate from the operations of the depository institution; and

(v) until the ''dissolution date'' (as that term is defined in section 1087–3 of title 20) has occurred, such depository institution will not use the trade name or service mark ''Sallie Mae'' in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that—

(I) the depository institution is the only institution offering such product or service using the ''Sallie Mae'' name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

(B) Terms and conditions

In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including—

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

(C) Additional limitations

In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association's ''investment portfolio'' shall not at any time exceed the lesser of—

(i) the value of such portfolio on the date of the enactment of this subsection; or

(ii) the value of such portfolio on the date such an arrangement is consummated. The term ''investment portfolio'' shall mean all investments shown on the consolidated balance sheet of the Association other than—

(I) any instrument or assets described in section 1087–2(d) of title 20;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

(D) Enforcement

The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 1087–3 of title 20.

(E) Definitions

For purposes of this paragraph, the following definition shall apply—

(i) Association; Holding Company

Notwithstanding any provision in section 1813 of this title, the terms ''Association'' and ''Holding Company'' have the same meanings as in section 1087–3(i) of title 20.

(ii) Secretary

The term ''Secretary'' means the Secretary of the Treasury.

(5) "Government-sponsored enterprise" defined

For purposes of this subsection, the term ''Government-sponsored enterprise'' has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(t) Recordkeeping requirements

(1) Requirements

Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 78c(a) of title 15. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

(2) Availability to Commission; confidentiality

Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) Definition

As used in this subsection the term ''Commission'' means the Securities and Exchange Commission.

(u) Limitation on claims

(1) In general

No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital;

(B) the insured depository institution is undercapitalized (as defined in section 1831*o* of this title); and

(C) for that portion of the transfer that is made by an entity covered by section 1844(g) of this title or section 1831v of this title, the Federal banking agency has followed the procedure set forth in such section.

(2) Definition of claim

For purposes of paragraph (1), the term ''claim''—

(A) means a cause of action based on Federal or State law that—

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

(v) Loans by insured institutions on their own stock

(1) General prohibition

No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

(2) Exclusion

For purposes of this subsection, an insured depository institution shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(Sept. 21, 1950, ch. 967, § 2[18], 64 Stat. 891; Pub. L. 86–463, May 13, 1960, 74 Stat. 129; Pub. L. 87–827, § 2, Oct. 15, 1962, 76 Stat. 953; Pub. L. 89–79, § 2, July 21, 1965, 79 Stat. 244; Pub. L. 89–356, § 1, Feb. 21, 1966, 80 Stat. 7; Pub. L. 89–485, § 12(c), July 1, 1966, 80 Stat. 242; Pub. L. 89–597, § 3, Sept. 21, 1966, 80 Stat. 824; Pub. L. 90–505, § 2(b), Sept. 21, 1968, 82 Stat. 856; Pub. L. 91–151, title I, §§ 2(a), 4(b), (c), Dec. 23, 1969, 83 Stat. 372, 374, 375; Pub. L. 93–100, § 3, Aug. 16, 1973, 87 Stat. 342; Pub. L. 93–495, title I, § 106, Oct. 28, 1974, 88 Stat. 1505; Pub. L. 93–501, title I, § 102(a), title III, § 302, Oct. 29, 1974, 88 Stat. 1558, 1560; Pub. L. 95–369, § 6(c)(25)–(28), Sept. 17, 1978, 92 Stat. 620; Pub. L. 95–630, title I, § 108, title III, §§ 301(b), (c), 306, Nov. 10, 1978, 92 Stat. 3664, 3675, 3677; Pub. L. 96–104, title II, § 202, Nov. 5, 1979, 93 Stat. 792; Pub. L. 96–161, title I, § 101(b), title II, § 209, Dec. 28, 1979, 93 Stat. 1233, 1239; Pub. L. 96–221, title II, § 207(b)(2), (3), title III, §§ 302(b), 307, title V, § 529, Mar. 31, 1980, 94 Stat. 144, 146, 147, 168; Pub. L. 97–320, title I, § 113(n), (*o*), title IV, §§ 410(d), 423, 424(b), (d)(10), (e), Oct. 15, 1982, 96 Stat. 1474, 1520, 1522, 1523; Pub. L. 100–86, title I, §§ 102(b), 103, title V, § 504(b), Aug. 10, 1987, 101 Stat. 566, 632; Pub. L. 101–73, title II, §§ 201, 221, title IX, §§ 905(d), 907(c), Aug. 9, 1989, 103 Stat. 187, 266, 460, 466; Pub. L. 101–647, title XXV, § 2523(a), Nov. 29, 1990, 104 Stat. 4868; Pub. L. 102–242, title III, §§ 304(a), 305(a), 306(k), Dec. 19, 1991, 105 Stat. 2354, 2359; Pub. L. 102–550, title XVI, § 1605(a)(9), Oct. 28, 1992, 106 Stat. 4086; Pub. L. 103–325, title III, §§ 321(b), 324, 326(b)(1), title VI, § 602(a)(44)–(50), Sept. 23, 1994, 108 Stat. 2226, 2227, 2229, 2290; Pub. L. 103–328, title I, §§ 101(d), 102(b)(3)(A), 103(b), Sept. 29, 1994, 108 Stat. 2342, 2350, 2353; Pub. L. 104–208, div. A, title II, §§ 2615(b), 2704(d)(14)(U), (V), Sept. 30, 1996, 110 Stat. 3009–479, 3009–494; Pub. L. 105–277, div. H, § 2, Oct. 21, 1998, 112 Stat. 2681–854; Pub. L. 106–102, title II, § 204, title VII, § 730, Nov. 12, 1999, 113 Stat. 1391, 1476; Pub. L. 106–569, title XII, § 1207(b), Dec. 27, 2000, 114 Stat. 3034.)

REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (c)(8), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of the Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (the Clayton Act), referred to in subsec. (c)(8), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The date of enactment of this subsection, referred to in subsec. (c)(10), probably means the date of enactment of Pub. L. 93–495, which was approved Oct. 28, 1974.

Section 1831u of this title, referred to in subsec. (d)(3), was subsequently amended, and subsec. (f)(4) of section 1831u no longer defines the term ''home State''. However, such term is defined elsewhere in that section.

Section 19 of the Federal Reserve Act, as amended, referred to in subsec. (g)(1), is classified to sections 142, 371a, 371b, 371b–1, 374, 374a, 461, 463 to 466, 505, and 506 of this title. For provisions of section 19 relating to payment of interest on demand deposits, see section 371a of this title.

The date of the enactment of this subsection, referred to in subsec. (s)(4)(C)(i), probably means the date of enactment of Pub. L. 105–277, which added par. (4) of subsec. (s) and redesignated former par. (4) as (5), and which was approved Oct. 21, 1998.

Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (s)(5), is section 1404(e)(1)(A) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

CODIFICATION

Section 202 of Pub. L. 96–104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96–161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96–161, set out under section 85 of this title.

Section 302 of Pub. L. 93–501, cited as a credit to this section, was repealed by Pub. L. 96–104, § 1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96–104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96–104, set out under section 85 of this title.

PRIOR PROVISIONS

Subsecs. (a) to (g) are derived from subsec (v)(2) to (8) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2000—Subsecs. (t), (u). Pub. L. 106–569, § 1207(b)(1), redesignated subsec. (t), relating to limitation on claims, as (u).

Subsec. (v). Pub. L. 106–569, § 1207(b)(2), added subsec. (v).

1999—Subsec. (t). Pub. L. 106–102, § 730, added subsec. (t) relating to limitation on claims.

Pub. L. 106–102, § 204, which directed amendment of section by adding at end subsec. (t) relating to recordkeeping requirements, was executed by making the addition after subsec. (s) to reflect the probable intent of Congress.

1998—Subsec. (s)(4), (5). Pub. L. 105–277 redesignated par. (4) as (5) and added par. (4).

1996—Subsec. (m)(3). Pub. L. 104–208, § 2704(d)(14)(U), which directed substitution of ''Deposit Insurance Fund'' for ''Savings Association Insurance Fund'' wherever appearing and striking of ''or the Bank Insurance Fund'' in subpar. (C), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (p). Pub. L. 104–208, § 2704(d)(14)(V), which directed substitution of ''Deposit Insurance Fund'' for ''deposit insurance funds'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (s). Pub. L. 104–208, § 2615(b), added subsec. (s).

1994—Subsec. (b). Pub. L. 103–325, § 602(a)(44), substituted ''if the insured depository institution deposits'' for '', if such bank shall deposit''.

Subsec. (c)(1)(B). Pub. L. 103–325, § 602(a)(45), inserted ''or'' at end.

Subsec. (c)(4). Pub. L. 103–325, §§ 324, 602(a)(46), substituted ''other Federal banking agencies'' for ''other two banking agencies'' in two places and inserted at end ''Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.''

Subsec. (c)(6). Pub. L. 103–325, §§ 321(b), 602(a)(47), substituted ''other Federal banking agencies'' for ''other two banking agencies'' and inserted before period at end ''or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval''.

Subsec. (c)(9). Pub. L. 103–325, § 602(a)(48), substituted ''with—'' for ''with the following information:''.

Subsec. (d)(3). Pub. L. 103–328, § 102(b)(3)(A), added par. (3).

Subsec. (d)(4). Pub. L. 103–328, § 103(b), added par. (4).

Subsec. (f). Pub. L. 103–325, § 602(a)(49), substituted ''such insured depository institution'' for ''such bank'' and ''the insured depository institution'' for ''the bank''.

Subsec. (k)(4)(A)(ii)(II). Pub. L. 103–325, § 602(a)(50), struck out ''or'' at end.

Subsec. (q). Pub. L. 103–325, § 326(b)(1), added subsec. (q).

Subsec. (r). Pub. L. 103–328, § 101(d), added subsec. (r).

1992—Subsec. (p). Pub. L. 102–550 redesignated subsec. (*o*), relating to periodic review of capital standards, as (p).

1991—Subsec. (j). Pub. L. 102–242, § 306(k), amended subsec. (j) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) to (6).

Subsec. (*o*). Pub. L. 102–242, § 305(a), added subsec. (*o*) relating to periodic review of capital standards.

Pub. L. 102–242, § 304(a), added subsec. (*o*) relating to real estate lending.

1990—Subsec. (k). Pub. L. 101–647 added subsec. (k).

1989—Subsec. (a). Pub. L. 101–73, § 221(1), substituted heading and pars. (1) to (3) for first two sentences which read as follows: ''Every insured bank shall display at each place of business maintained by it a sign or signs, and shall include a statement to the effect that its deposits are insured by the Corporation in all of its advertisements: *Provided*, That the Board of Directors may exempt from this requirement advertisements which do not relate to deposits or when it is impractical to include such statement therein. The Board of Directors shall prescribe by regulation the forms of such signs and the manner of display and the substance of such statements and the manner of use.''

Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsecs. (b), (c)(1), (2). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (c)(2)(C), (D). Pub. L. 101–73, § 221(2)(A), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''the Corporation if the acquiring, assuming or resulting bank is to be a nonmember insured bank (except a District bank).''

Subsec. (c)(3). Pub. L. 101–73, § 221(2)(C), (D), substituted ''banks or savings associations'' for ''banks'' wherever appearing and ''default'' for ''failure''.

Subsec. (c)(4), (6). Pub. L. 101–73, § 221(2)(C), substituted ''banks or savings associations'' for ''banks''.

Subsec. (c)(7)(C), (9)(A). Pub. L. 101–73, § 221(2)(C), substituted ''bank or savings association'' for ''bank''.

Subsec. (c)(10). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (c)(12). Pub. L. 101–73, § 221(2)(B), struck out par. (12) which read as follows: ''The provisions of this subsection shall not apply to any transaction where the acquiring, assuming, or resulting institution is an insured Federal savings bank or an institution insured by the Federal Savings and Loan Insurance Corporation, except that any insured bank involved in the transaction shall notify the Corporation in writing at least 30 days prior to consummation of the transaction and, if any approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is required in connection therewith, such approving authority shall provide the Corporation with notification of the application for approval, shall consult with the Corporation before disposing of the application, and shall provide notification to the Corporation of the determination with respect to said application.''

Subsecs. (e), (f). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank'' wherever appearing.

Subsec. (g)(1). Pub. L. 101–73, § 201(b), substituted ''Director of the Office of Thrift Supervision'' for ''Federal Home Loan Bank Board''.

Subsec. (h). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (i)(2). Pub. L. 101–73, § 221(3)(A), (B), substituted ''insured Federal depository institution'' and ''insured State depository institution'' for ''insured bank'' and ''insured State bank'', respectively.

Subsec. (i)(2)(D). Pub. L. 101–73, § 221(3)(C), (D), added subpar. (D).

Subsec. (i)(3). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (i)(4)(D). Pub. L. 101–73, § 221(3)(E), which directed the amendment of subsec. (i)(2) by inserting ''and fitness'' after ''character'' in par. (4)(D), was executed to par. (4)(D) as the probable intent of Congress.

Subsec. (i)(5). Pub. L. 101–73, § 221(3)(F), which directed the amendment of subsec. (i)(2) by striking out par. (5), was executed to par. (5) as the probable intent of Congress. Prior to amendment, par. (5) read as follows: ''Nothing in this subsection shall apply to a conversion of an insured bank to an insured institution pursuant to section 1726(e) of this title.''

Subsec. (j)(3)(D). Pub. L. 101–73, § 201(a), substituted ''insured depository institution'' for ''insured bank''.

Subsec. (j)(4), (5). Pub. L. 101–73, § 907(c), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

''(4)(A) Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such nonmember insured bank who violates any provision of section 371c, 371c–1, or 375b of this title, or any lawful regulation issued pursuant thereto, or any provision of section 377 of this title, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided*, That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used in this section, the term 'violates' includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

''(B) In determining the amount of the penalty the Corporation shall take into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

''(C) The nonmember insured bank or person charged shall be afforded an opportunity for agency hearing,

upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided the assessment shall constitute a final and unappealable order.

''(D) Any nonmember insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

''(E) If any nonmember insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

''(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

''(G) All penalties collected under the authority of this paragraph shall be covered into the Treasury of the United States.

''(5) The provisions of this subsection shall not apply to an insured Federal savings bank.''

Subsec. (j)(6). Pub. L. 101–73, § 905(d), added par. (6).

Subsecs. (m), (n). Pub. L. 101–73, § 221(4), added subsecs. (m) and (n).

1987—Subsec. (c)(12). Pub. L. 100–86, § 504(b)(1), amended par. (12) generally. Prior to amendment, par. (12) read as follows: ''The provisions of this subsection shall not apply to any merger transaction involving an insured Federal savings bank unless the resulting institution will be an insured bank other than an insured Federal savings bank.''

Subsec. (i)(5). Pub. L. 100–86, § 504(b)(2), added par. (5).

Subsec. (j)(1). Pub. L. 100–86, § 102(b)(1), inserted reference to section 371c–1 of this title in two places.

Subsec. (j)(3). Pub. L. 100–86, § 103(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (j)(4). Pub. L. 100–86, §§ 102(b)(2), 103, redesignated former par. (3) as (4) and in subpar. (A) inserted '', 371c–1,'' and ''or any provision of section 377 of this title,''.

Subsec. (j)(5). Pub. L. 100–86, § 103(a), redesignated former par. (4) as (5).

1982—Subsec. (c)(12). Pub. L. 97–320, § 113(n), added par. (12).

Subsec. (j)(1). Pub. L. 97–320, § 410(d), struck out ''within the meaning of section 221a of this title and'' after ''of a nonmember insured bank,''.

Subsec. (j)(2). Pub. L. 97–320, § 423, inserted provisions relating to the applicability of this subsection to any foreign bank as defined in section 3101(7) of this title and its branch in the United States.

Subsec. (j)(3)(A). Pub. L. 97–320, § 424(b), (d)(10), inserted proviso giving the Corporation discretionary authority to compromise, etc., any civil money penalty imposed under this subsection, and substituted ''may be assessed'' for ''shall be assessed''.

Subsec. (j)(3)(D). Pub. L. 97–424(e), substituted ''twenty days from the service'' for ''ten days from the date''.

Subsec. (j)(4). Pub. L. 97–320, § 113(*o*), added par. (4).

1980—Subsec. (g). Pub. L. 96–221, §§ 302(b), 307, inserted provisions identical to provisions inserted by section 101(b) of Pub. L. 96–161, designating existing provisions as par. (1) and adding par. (2), and repealing the amendment made by Pub. L. 96–161. See Repeals and Effective Date of 1980 Amendment notes below.

Pub. L. 96–221, § 207(b)(2), (3), provided for the future amendment of subsec. (g)(1) by striking out ''payment and'' and '', including limitations on the rates of interest or dividends that may be paid'' in second sentence, and by striking out third, fifth, and eighth sentences which read as follows: ''The Board of Directors may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of insured nonmember banks or their depositors, or according to such other reasonable bases as the Board of Directors may deem desirable in the public interest. Such regulations shall prohibit any insured nonmember bank from paying any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board of Directors, and from waiving any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or to withdrawal of deposits, the offending bank shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.'' See Effective Date of 1980 Amendment note below.

Subsec. (k). Pub. L. 96–221, § 529, repealed Pub. L. 96–104 and title II of Pub. L. 96–161, resulting in the striking out of subsec. (k) which had provided that no insured nonmember bank or affiliate, or any successor, assignee, endorser, guarantor, or surety thereof, could plead or claim, directly or otherwise, with respect to any deposit or obligation of such bank or affiliate, any defense, right, or benefit under any provision of a State or territory of the United States, or the District of Columbia, regulating or limiting the rate of interest which could be charged or received, etc. and any such provision was preempted, and no civil or criminal penalty which would otherwise be applicable under such provision would apply to such bank or affiliate or any other person.

1979—Subsec. (g). Pub. L. 96–161, § 101(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (k). Pub. L. 96–161, § 209, added subsec. (k). A prior subsec. (k), added by Pub. L. 96–104 and identical to the subsec. (k) added by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161. See Codification note above.

Pub. L. 96–104 added subsec. (k). A prior subsec. (k), which also related to the inapplicability of State usury ceilings to certain obligations issued by insured nonmember banks and affiliates, was repealed by section 1 of Pub. L. 96–104.

1978—Subsec. (c)(1)(B). Pub. L. 95–630, § 306, inserted ''(including liabilities which would be 'deposits' except for the proviso in section 1813(*l*)(5) of this title)'' after ''pay any deposits''.

Subsec. (c)(11). Pub. L. 95–369, § 6(c)(25), added par. (11).

Subsec. (d). Pub. L. 95–630, § 301(b), designated existing provisions as par. (1) and, inserted ''domestic'' after ''operate any new'' and ''such'' after ''main office or any'', and added par. (2).

Pub. L. 95–369, § 6(c)(26), inserted provision prohibiting a foreign bank from moving any insured branch from one location to another without the consent of the Corporation.

Subsec. (g). Pub. L. 95–369, § 6(c)(27), inserted ''and in insured branches of foreign banks'' after ''in insured nonmember banks''.

Subsec. (j). Pub. L. 95–630, § 108, designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 95–369, § 6(c)(28), inserted at end ''The provisions of this subsection shall not apply to any foreign

bank having an insured branch with respect to dealings between such bank and any affiliate thereof.''

Subsec. (*l*). Pub. L. 95–630, § 301(c), added subsec. (*l*).

1974—Subsec. (c)(10). Pub. L. 93–495 added par. (10).

Subsec. (g). Pub. L. 93–501, § 102(a), struck out requirement that obligations other than deposits undertaken by insured non-member banks be for the purpose of obtaining funds to be used in the banking business in provisions relating to applicability of this subsection and of regulations under the subsection to such obligations.

Subsec. (k). Pub. L. 93–501, § 302, added subsec. (k).

1973—Subsec. (g). Pub. L. 93–100 extended rulemaking authority of Board of Directors to payment and advertisement of dividends on deposits and in the provisions relating to the applicability of the subsection to noninsured banks in the States, eliminated clause designation and struck out provisions of former cl. (2).

1969—Subsec. (g). Pub. L. 91–151 extended the authority of the Board under this subsection to noninsured banks in the States where uninsured savings deposits exceed 20 per cent of the total savings deposits, and, where State laws do not provide for such regulations, empowered the Board up to July 31, 1970, to prevent the rates paid by such noninsured institutions from exceeding 5½ per cent, and further authorized the Board to bring actions in federal courts for compliance, authorized the Board to determine what could be deemed a payment of interest and provided for the promulgation of regulations necessary for the enforcement of the subsection, made the subsection and the regulations thereunder applicable to obligations other than deposits undertaken by insured nonmember banks and their affiliates and extended the regulatory power of the Board to include ''dividends''.

1968—Subsec. (g). Pub. L. 90–505 gave the Board power to prescribe rules governing the payment and advertisement of interest on deposits.

1966—Subsec. (c). Pub. L. 89–356, § 1(a), laid down more definite guidelines for dealing with the antitrust aspects of bank mergers by prohibiting monopoly bank mergers in all cases, forbidding anticompetitive mergers except in cases where a clear showing is made that a given merger is so beneficial that its allowance is in the public interest, and requiring the uniform application of the law by both judicial and administrative bodies, inserted provisions to delay the effectiveness of agency approval of merger transactions except in emergency situations, imposed a special statute of limitations for antitrust actions arising out of agency-approved merger transactions thereby precluding antitrust actions when the agency has acted immediately to prevent probable failure of a bank, provided for the automatic staying of the effectiveness of agency action by the commencement of an antitrust action unless the court orders otherwise, called for de novo court review, permitted federal bank agencies which approved a subsequently challenged merger to appear in the suit by its own counsel, allowed state banking agencies to present their views, and inserted a definition of ''antitrust laws'' which would include the Sherman Act, the Clayton Act, and any other Acts in pari materia.

Subsec. (g). Pub. L. 89–597 made the authority of the FDIC Board to prescribe maximum permissible rates of interest that may be paid by member banks on time and savings deposits discretionary rather than mandatory, included such payments by insured mutual savings banks, required prior consultations with the Board of Governors of the FRS and the FHLB Board, authorized different rate limitations for different classes of deposits, for deposits of different amounts, or according to such other reasonable bases as the Board may deem desirable in the public interest, and eliminate provision for rate limitation according to the varying discount rates of member banks in the several Federal Reserve districts.

Subsec. (i). Pub. L. 89–356, § 1(b), added subsec. (i).

Subsec. (j). Pub. L. 89–485 added subsec. (j).

1965—Subsec. (g). Pub. L. 89–79 extended until Oct. 15, 1968, the period during which the provisions of this subsection should not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1962—Subsec. (g). Pub. L. 87–827 inserted sentence making the subsection inapplicable, during the period commencing on Oct. 15, 1962, and ending upon the expiration of three years after such date, to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1960—Subsec. (c). Pub. L. 86–463 prohibited merger or consolidation of any insured bank with any other insured bank, or acquisition of assets of, or assumption of liability to pay any deposits made in, any other insured bank without prior written consent, required publication of notice of any proposed merger, consolidation, acquisition of assets, or assumption of liabilities, enumerated specific items required to be considered before consent may be granted or withheld, directed the agency involved to request a report on competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection, and provided for inclusion in the annual report of the Comptroller, the Board and the Corporation of each merger, consolidation, acquisition of assets, or assumption of liabilities approved.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–102, title II, § 209, Nov. 12, 1999, 113 Stat. 1395, provided that: ''This subtitle [subtitle A (§§ 201–210) of title II of Pub. L. 106–102, amending this section and sections 78c, 78*o*, and 78*o*–3 of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 1811 of this title and section 78c of Title 15] shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act [Nov. 12, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2615(b) of Pub. L. 104–208 applicable on and after Jan. 1, 1996, see section 2615(c) of Pub. L. 104–208, set out as a note under section 1781 of this title.

Amendment by section 2704(d)(14)(U), (V) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101(e) of Pub. L. 103–328 provided that: ''The amendments made by this section [amending this section and sections 1841, 1842, and 1846 of this title] shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act [Sept. 29, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(k) of Pub. L. 102–242 effective upon earlier of date on which final regulations under section 306(m)(1) of Pub. L. 102–242 become effective or 150 days after Dec. 19, 1991, see section 306(*l*) of Pub. L. 102–242, set out as a note under section 375b of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(c) of Pub. L. 101–73 applicable to conduct engaged in after Aug. 9, 1989, except

that increased maximum penalties of $5,000 and $25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(*l*) of Pub. L. 101–73, set out as a note under section 93 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 207(b) of Pub. L. 96–221 provided in part that the amendment by that section is effective 6 years after Mar. 31, 1980.

Amendment by section 302(b) of Pub. L. 96–221 effective at the close of Mar. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

Section 529 of Pub. L. 96–221 provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENTS

Amendment by section 101(b) of Pub. L. 96–161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96–161, set out as a note under section 371a of this title.

Amendment by section 209 of Pub. L. 96–161 applicable only with respect to deposits made or obligations issued in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment made by Pub. L. 96–161 to apply with respect to such deposits and obligations; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 211 of Pub. L. 96–161, set out as an Effective Date of 1979 Amendment note under section 371b–1 of this title.

Amendment by Pub. L. 96–104 applicable to deposits made or obligations issued in any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to such deposits and obligations, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 204 of Pub. L. 96–104, set out as an Effective Date of 1979 Amendment note under section 371b–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 108 of Pub. L. 95–630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95–630, set out as a note under section 93 of this title.

Amendment by sections 301(c) and 306 of Pub. L. 95–630 effective on the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95–630, set out as an Effective Date note under section 375b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 102(b) of Pub. L. 93–501 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to any bank holding company which has filed prior to the date of enactment of this Act [Oct. 29, 1974] an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act [section 1843 of this title], or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933 [section 77c(a)(3) of Title 15, Commerce and Trade].''

Amendment by section 302 of Pub. L. 93–501 applicable to deposits made or obligations issued in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law limiting the amount of interest which may be charged in connection with such deposits or obligations, see section 304 of Pub. L. 93–501, set out as a note under section 371b–1 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–100 effective on thirtieth day after Aug. 16, 1973, see section 8 of Pub. L. 93–100, set out as an Effective Date note under section 1469 of this title.

EFFECTIVE AND TERMINATION DATES OF 1969 AMENDMENT

Section 7 of Pub. L. 89–597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of subsec. (g) of this section by addition of three sentences at the end thereof by section 2(a) of Pub. L. 91–151 to be effective only to Dec. 15, 1980, and that on Dec 15, 1980, such three sentences were to be repealed) was repealed by section 207(a) of Pub. L. 96–221.

EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Section 7 of Pub. L. 89–597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of the second and third sentences of subsec. (g) of this section by section 3 of Pub. L. 89–597 was effective only to Dec. 15, 1980, and that on Dec. 15, 1980, such sentences were to be amended to read as they would without the amendment by section 3 of Pub. L. 89–597), was repealed by section 207(a) of Pub. L. 96–221.

REPEALS

Amendment by section 101 of Pub. L. 96–161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96–221, and substantially identical provisions were enacted by section 302 of Pub. L. 96–221, such amendments to take effect at the close of Mar. 31, 1980.

SAVINGS PROVISION

Section 529 of Pub. L. 96–221 provided in part that, notwithstanding the repeal of Pub. L. 96–104 and title II of Pub. L. 96–161, the provisions of subsec. (k) of this section [which had been added to this section by those repealed laws] shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsection (c)(9) of this section is listed on page 171), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

BANKING AGENCY PUBLICATION REQUIREMENTS

Pub. L. 105–18, title V, §50004, June 12, 1997, 111 Stat. 212, provided that:

''(a) IN GENERAL.—A qualifying regulatory agency may take any of the following actions with respect to

depository institutions or other regulated entities whose principal place of business is within, or with respect to transactions or activities within, an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, if the agency determines that the action would facilitate recovery from the major disaster:

''(1) PROCEDURE.—Exercising the agency's authority under provisions of law other than this section without complying with—

''(A) any requirement of section 553 of title 5, United States Code; or

''(B) any provision of law that requires notice or opportunity for hearing or sets maximum or minimum time limits with respect to agency action.

''(2) PUBLICATION REQUIREMENTS.—Making exceptions, with respect to institutions or other entities for which the agency is the primary Federal regulator, to—

''(A) any publication requirement with respect to establishing branches or other deposit-taking facilities; or

''(B) any similar publication requirement.

''(b) PUBLICATION REQUIRED.—A qualifying regulatory agency shall publish in the Federal Register a statement that—

''(1) describes any action taken under this section; and

''(2) explains the need for the action.

''(c) QUALIFYING REGULATORY AGENCY DEFINED.—For purposes of this section, the term 'qualifying regulatory agency' means—

''(1) the Board of Governors of the Federal Reserve System;

''(2) the Comptroller of the Currency;

''(3) the Director of the Office of Thrift Supervision;

''(4) the Federal Deposit Insurance Corporation;

''(5) the Financial Institutions Examination Council;

''(6) the National Credit Union Administration; and

''(7) with respect to chapter 53 of title 31, United States Code, the Secretary of the Treasury.

''(d) EXPIRATION.—Any exception made under this section shall expire not later than February 28, 1998.''

Similar provisions were contained in the following prior acts:

Pub. L. 103–76, § 4, Aug. 12, 1993, 107 Stat. 753.

Pub. L. 102–485, § 5, Oct. 23, 1992, 106 Stat. 2773.

REVIEW OF RISK-BASED CAPITAL STANDARDS

Section 305(b) of Pub. L. 102–242, as amended by Pub. L. 103–325, title III, § 335, Sept. 23, 1994, 108 Stat. 2233, provided that:

''(1) IN GENERAL.—Each appropriate Federal banking agency shall revise its risk-based capital standards for insured depository institutions to ensure that those standards—

''(A) take adequate account of—

''(i) interest-rate risk;

''(ii) concentration of credit risk; and

''(iii) the risks of nontraditional activities;

''(B) reflect the actual performance and expected risk of loss of multifamily mortgages; and

''(C) take into account the size and activities of the institutions and do not cause undue reporting burdens.

''(2) INTERNATIONAL DISCUSSIONS.—The Federal banking agencies shall discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements.

''(3) DEADLINE FOR PRESCRIBING REVISED STANDARDS.—Each appropriate Federal banking agency shall—

''(A) publish final regulations in the Federal Register to implement paragraph (1) not later than 18 months after the date of enactment of this Act [Dec. 19, 1991]; and

''(B) establish reasonable transition rules to facilitate compliance with those regulations.

''(4) DEFINITIONS.—For purposes of this subsection, the terms 'appropriate Federal banking agency', 'Federal banking agency' and 'insured depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).''

PURCHASED MORTGAGE SERVICING RIGHTS

Pub. L. 102–242, title IV, § 475, Dec. 19, 1991, 105 Stat. 2386, as amended by Pub. L. 102–550, title XVI, § 1606(i)(2), Oct. 28, 1992, 106 Stat. 4089; Pub. L. 106–569, title XII, § 1208, Dec. 27, 2000, 114 Stat. 3035, provided that:

''(a) IN GENERAL.—Notwithstanding section 5(t)(4) of the Home Owners' Loan Act [12 U.S.C. 1464(t)(4)], each appropriate Federal banking agency shall determine, with respect to insured depository institutions for which it is the appropriate Federal regulator, the amount of readily marketable purchased mortgage servicing rights that may be included in calculating such institution's tangible capital, risk-based capital, or leverage limit, if—

''(1) such servicing rights are valued at not more than 90 percent (or such other percentage exceeding 90 percent but not exceeding 100 percent, as may be determined under subsection (b)) of their fair market value; and

''(2) the fair market value of such servicing rights is determined not less often than quarterly.

''(b) AUTHORITY TO DETERMINE PERCENTAGE BY WHICH TO DISCOUNT VALUE OF SERVICING RIGHTS.—The appropriate Federal banking agencies may allow readily marketable purchased mortgage servicing rights to be valued at more than 90 percent of their fair market value but at not more than 100 percent of such value, if such agencies jointly make a finding that such valuation would not have an adverse effect on the deposit insurance funds or the safety and soundness of insured depository institutions.

''(c) DEFINITION.—For purposes of this section, the terms 'appropriate Federal banking agency', 'deposit insurance fund', and 'insured depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(d) EFFECTIVE DATE.—This section shall apply after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 19, 1991].''

ELIMINATION OF INTEREST RATE DIFFERENTIALS

Section 326(b)–(d) of Pub. L. 97–320 provided that:

''(b)(1) Interest rate differentials for all categories of deposits or accounts between (i) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation, and (ii) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(j)) [12 U.S.C. 1813(f)], shall be phased out on or before January 1, 1984.

''(2) Any differential which is being phased out pursuant to a schedule established by regulations prescribed by the Depository Institutions Deregulation Committee prior to the date of enactment of this Act [Oct. 15, 1982] shall be phased out as soon as practicable, but in no event later than such schedule provides.

''(3) Notwithstanding any other provision of law, no differential for any category of deposits or accounts shall be established or maintained on or after January 1, 1984.

''(c) No interest rate differential may be established or maintained in the case of the deposit account authorized pursuant to section 204(c) of the Depository Institutions Deregulation Act of 1980 [12 U.S.C. 3503(c)].

''(d) In the case of the elimination or reduction of any interest rate differential under subsection (b) with re-

spect to any category of deposits or accounts between (1) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation and (2) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act [12 U.S.C. 1813(f)], the maximum rate of interest which shall be established for such category of deposits for banks (other than savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation shall be equal to the highest rate of interest which savings and loan associations the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation were permitted to pay on such category of deposits immediately prior to the elimination or reduction of such interest rate differential.''

STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Section 213 of Pub. L. 96–161 provided that the provisions of title II of Pub. L. 96–161, which enacted subsec. (k) of this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

INTEREST RATES; CONTROLS

Reduction of interest rates to maximum extent feasible in light of prevailing money market and general economic conditions, see section 1 of Pub. L. 89–597, set out as a note under section 461 of this title.

REINSTATEMENT OF WITHDRAWN OR ABANDONED APPLICATIONS MADE BEFORE FEBRUARY 21, 1966, FOR APPROVAL OF MERGERS

Section 3 of Pub. L. 89–356 provided that: ''Any application for approval of a merger transaction (as the term 'merged transaction' is used in section 18(c) of the Federal Deposit Insurance Act) [subsec. (c) of this section] which was made before the date of enactment of this Act [Feb. 21, 1966], but was withdrawn or abandoned as a result of any objections made or any suit brought by the Attorney General, may be reinstituted and shall be acted upon in accordance with the provisions of this Act without prejudice by such withdrawal, abandonment, objections, or judicial proceedings.''

SPECIAL ANTITRUST TREATMENT OF MERGER TRANSACTIONS CONSUMMATED BEFORE FEBRUARY 21, 1966, AND OF LITIGATION PENDING ON OR AFTER FEBRUARY 21, 1966, WITH RESPECT TO MERGER TRANSACTIONS CONSUMMATED AFTER JUNE 16, 1963

Section 2 of Pub. L. 89–356 provided that:

''(a) Any merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated prior to June 17, 1963, the bank resulting from which has not been dissolved or divided and has not effected a sale or distribution of assets and has not taken any other similar action pursuant to a final judgment under the antitrust laws prior to the enactment of this Act [Feb. 21, 1966], shall be conclusively presumed to have not been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

''(b) No merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated after June 16, 1963, and prior to the date of enactment of this Act [Feb. 21, 1966] and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this Act [Feb. 21, 1966] may be attacked after such date in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

''(c) Any court having pending before it on or after the date of enactment of this Act [Feb. 21, 1966] any litigation initiated under the antitrust laws by the Attorney General after June 16, 1963 with respect to the merger, consolidation, acquisition of assets, or assumption of liabilities of an insured bank consummated after June 16, 1963, shall apply the substantive rule of law set forth in section 18(c)(5) of the Federal Deposit Insurance Act [subsec. (c)(5) of this section], as amended by this Act.

''(d) For the purposes of this section, the term 'antitrust laws' means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 215a–3, 215c, 371, 1464, 1467a, 1468, 1815, 1817, 1818, 1820, 1821, 1828b, 1831p–1, 1831u, 1843, 2902, 3103, 4803 of this title; title 15 section 18a.

§ 1828a. Prudential safeguards

(a) Comptroller of the Currency

(1) In general

The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are—

(A) consistent with the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of insured depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) Review

The Comptroller of the Currency shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Comptroller finds is no longer required for such purposes.

(b) Board of Governors of the Federal Reserve System

(1) In general

The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank;

if the Board makes a finding described in paragraph (2) with respect to such restriction or requirement.

(2) Finding

The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that the exercise of such authority is—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], and other Federal law applicable to depository institution subsidiaries of bank holding companies or State member banks, as the case may be; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(3) Review

The Board of Governors of the Federal Reserve System shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) or (4) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (2)(B) or (4)(B); and

(B) modify or eliminate any such restriction or requirement the Board finds is no longer required for such purposes.

(4) Foreign banks

The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(c) Federal Deposit Insurance Corporation

(1) In general

The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and a subsidiary of the State nonmember bank that the Corporation finds are—

(A) consistent with the purposes of this Act, the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], or other Federal law applicable to State nonmember banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of depository institutions or any Federal deposit insurance fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

(2) Review

The Federal Deposit Insurance Corporation shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Corporation finds is no longer required for such purposes.

(Pub. L. 106–102, title I, § 114, Nov. 12, 1999, 113 Stat. 1369.)

REFERENCES IN TEXT

This Act and the Act, referred to in text, probably are references to Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

Title LXII of the Revised Statutes, referred to in subsec. (a)(1)(A), is title 62 of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to sections 21, 22 to 24a, 25a, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 56, 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title. See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (b)(2)(A), (4)(A), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (b)(2)(A), (4)(A), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (c)(1)(A), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

EFFECTIVE DATE

Section effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3106 of this title.

§ 1828b. Interagency data sharing

(a) In general

To the extent not prohibited by other law, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System shall make available to the Attorney General and the Federal Trade Commission any data in the possession of any such banking agency that the antitrust agency deems necessary for antitrust review of any transaction requiring notice to any such antitrust agency or the approval of such agency under section 1842 or 1843 of this title, section 1828(c) of this title, the National Bank Consolidation and Merger Act [12 U.S.C. 215 et seq.], section 1467a of this title, or the antitrust laws.

(b) Confidentiality requirements

(1) In general

Any information or material obtained by any agency pursuant to subsection (a) of this section shall be treated as confidential.

(2) Procedures for disclosure

If any information or material obtained by any agency pursuant to subsection (a) of this section is proposed to be disclosed to a third party, written notice of such disclosure shall first be provided to the agency from which such information or material was obtained and an opportunity shall be given to such agency to oppose or limit the proposed disclosure.

(3) Other privileges not waived by disclosure under this section

The provision by any Federal agency of any information or material pursuant to subsection (a) of this section to another agency shall not constitute a waiver, or otherwise affect, any privilege any agency or person may claim with respect to such information under Federal or State law.

(4) Exception

No provision of this section shall be construed as preventing or limiting access to any information by any duly authorized committee of the Congress or the Comptroller General of the United States.

(c) Banking agency information sharing

The provisions of subsection (b) of this section shall apply to—

(1) any information or material obtained by any Federal banking agency (as defined in section 1813(z) of this title) from any other Federal banking agency; and

(2) any report of examination or other confidential supervisory information obtained by any State agency or authority, or any other person, from a Federal banking agency.

(Pub. L. 106–102, title I, § 132, Nov. 12, 1999, 113 Stat. 1382.)

REFERENCES IN TEXT

The National Bank Consolidation and Merger Act, referred to in subsec. (a), is act Nov. 7, 1918, ch. 209, as added by Pub. L. 86–230, § 20, Sept. 8, 1959, 73 Stat. 460, and amended, which is classified generally to subchapter XVI (§ 215 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 215 of this title and Tables.

The antitrust laws, referred to in subsec. (a), are classified generally to chapter 1 (§ 1 et seq.) of Title 15, Commerce and Trade.

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

EFFECTIVE DATE

Section effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

§ 1829. Penalty for unauthorized participation by convicted individual

(a) Prohibition

(1) In general

Except with the prior written consent of the Corporation—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) Minimum 10-year prohibition period for certain offenses

(A) In general

If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008,[1] 1014, 1032, 1344, 1517, 1956, or 1957 of title 18; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) Exception by order of sentencing court

(i) In general

On motion of the Corporation, the court in which the conviction or the agreement

[1] See References in Text note below.

of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) Period for filing

A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(b) Penalty

Whoever knowingly violates subsection (a) of this section shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(Sept. 21, 1950, ch. 967, § 2[19], 64 Stat. 893; Pub. L. 101–73, title IX, § 910(a), Aug. 9, 1989, 103 Stat. 477; Pub. L. 101–647, title XXV, § 2502(a), Nov. 29, 1990, 104 Stat. 4860; Pub. L. 102–550, title XV, § 1505, Oct. 28, 1992, 106 Stat. 4055; Pub. L. 103–322, title XXXII, § 320605, Sept. 13, 1994, 108 Stat. 2119.)

REFERENCES IN TEXT

Section 1008 of title 18, referred to in subsec. (a)(2)(A)(i)(I), was repealed by Pub. L. 101–73, title IX, § 961(g)(1), Aug. 9, 1989, 103 Stat. 500.

AMENDMENTS

1994—Subsec. (a)(2)(A)(i)(I). Pub. L. 103–322 substituted ''1517, 1956, or 1957'' for ''or 1956''.

1992—Subsec. (a)(1)(A). Pub. L. 102–550 inserted ''or money laundering'' after ''breach of trust''.

1990—Subsec. (a). Pub. L. 101–647 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Except with the prior written consent of the Corporation—

''(1) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust may not participate, directly or indirectly, in any manner in the conduct of the affairs of an insured depository institution; and

''(2) an insured depository institution may not permit such participation.''

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''Except with the written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured bank who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the bank involved shall be subject to a penalty of not more than $100 for each day this prohibition is violated, which the Corporation may recover for its use.''

PROVISIONS NOT REPEALED, MODIFIED OR AFFECTED

Nothing contained in sections 201 to 205 and 207 of Pub. L. 89–695 amending sections 1813 and 1817 to 1820 and repealing section 77 of this title to be construed as repealing, modifying, or affecting this section, see section 206 of Pub. L. 89–695, set out as a note under section 1813 of this title.

§ 1829a. Participation by State nonmember insured banks in lotteries and related activities

(a) Prohibited activities

A State nonmember insured bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery; or

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) Use of banking premises prohibited

A State nonmember insured bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a) of this section, or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a) of this section.

(c) Definitions

As used in this section—

(1) The term ''deal in'' includes making, taking, buying, selling, redeeming, or collecting.

(2) The term ''lottery'' includes any arrangement whereby three or more persons (the ''participants'') advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the ''winners'') will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term ''lottery ticket'' includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility), of becoming a winner in a lottery.

(d) Lawful banking services connected with operation of lottery

Nothing contained in this section prohibits a State nonmember insured bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

(e) Regulations; enforcement

The Board of Directors shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

(Sept. 21, 1950, ch. 967, § 2[20], as added Pub. L. 90–203, § 3, Dec. 15, 1967, 81 Stat. 610; amended Pub. L. 103–325, title VI, § 602(a)(51), Sept. 23, 1994, 108 Stat. 2290.)

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–325 inserted ''or'' at end.

EFFECTIVE DATE

Section effective Apr. 1, 1968, see section 6 of Pub. L. 90–203, set out as a note under section 25a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1306.

§ 1829b. Retention of records by insured depository institutions

(a) Congressional findings and declaration of purpose

(1) The Congress finds that adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks[1] of checks, as well as records kept by banks[1] of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(b) Recordkeeping regulations

(1) In general

Where the Secretary of the Treasury (referred to in this section as the ''Secretary'') determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

(2) Domestic funds transfers

Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') determine that the maintenance of records, by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

(3) International funds transfers

(A) In general

The Secretary and the Board shall jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which—

(i) involve international transactions; and

(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments,

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(B) Factors for consideration

In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

(C) Availability of records

Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary or the Board upon request.

(c) Identity of persons having accounts and persons authorized to act with respect to such accounts; exemptions

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, each insured depository institution shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the insured depository institution and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

(d) Reproduction of checks, drafts, and other instruments; record of transactions; identity of party

Each insured depository institution shall make, to the extent that the regulations of the Secretary so require—

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the insured depository institution has already made a record of the party's identity pursuant to subsection (c) of this section.

(e) Identity of persons making reportable currency and foreign transactions

Subject to the requirements of any regulations prescribed jointly by the Secretary and

[1] So in original. Probably should be ''financial institutions''.

the Board under paragraph (2) or (3) of subsection (b) of this section, whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured depository institution which is required to be reported or recorded under subchapter II of chapter 53 of title 31, the insured depository institution shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

(f) Additions to or substitutes for required records

Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section and in addition to or in lieu of the records and evidence otherwise referred to in this section, each insured depository institution shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

(g) Retention period

Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

(h) Report to Congress by Secretary of the Treasury

The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

(i) Application of provisions to foreign banks

The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any insured branch of such a bank.

(j) Civil penalties

(1) Penalty imposed

Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates, or any person who willfully causes such a violation, any regulation prescribed under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than $10,000.

(2) Treatment of continuing violation

A separate violation of any regulation prescribed under subsection (b) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

(3) Assessment

Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31.

(Sept. 21, 1950, ch. 967, § 2[21], as added Pub. L. 91–508, title I, § 101, Oct. 26, 1970, 84 Stat. 1114; amended Pub. L. 95–369, § 6(c)(29), Sept. 17, 1978, 92 Stat. 620; Pub. L. 100–690, title VI, § 6185(d)(1), Nov. 18, 1988, 102 Stat. 4356; Pub. L. 101–73, title II, § 201(a), Aug. 9, 1989, 103 Stat. 187; Pub. L. 102–550, title XV, §§ 1515(a), (b), 1535(b), Oct. 28, 1992, 106 Stat. 4058, 4059, 4066; Pub. L. 103–325, title VI, § 602(a)(52)–(54), Sept. 23, 1994, 108 Stat. 2290.)

CODIFICATION

In subsec. (e), ''subchapter II of chapter 53 of title 31'' was substituted for ''the Currency and Foreign Transactions Reporting Act [31 U.S.C. 1051 et seq.]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1994—Subsecs. (c), (d)(2), (e). Pub. L. 103–325 substituted ''the insured depository institution'' for ''the bank''.

1992—Subsec. (b). Pub. L. 102–550, § 1515(a), inserted heading, designated existing provisions as par. (1) and inserted heading, and added pars. (2) and (3).

Subsec. (c). Pub. L. 102–550, § 1515(b)(1), substituted ''Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, each insured'' for ''Each insured''.

Subsec. (e). Pub. L. 102–550, § 1515(b)(2), substituted ''Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section, whenever any'' for ''Whenever any''.

Subsec. (f). Pub. L. 102–550, § 1515(b)(3), substituted ''Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) of this section and in addition to'' for ''In addition to''.

Subsec. (j)(1). Pub. L. 102–550, § 1535(b), inserted '', or any person who willfully causes such a violation,'' after ''gross negligence violates''.

1989—Pub. L. 101–73 substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

1988—Subsec. (j). Pub. L. 100–690 added subsec. (j).

1978—Subsec. (i). Pub. L. 95–369 added subsec. (i).

EFFECTIVE DATE

Section effective on first day of seventh calendar month which begins after Oct. 26, 1970, except that the Secretary of the Treasury may, by regulation, provide that this section be effective on any date not earlier than the publication of such regulations in the Federal Register and not later than first day of thirteenth calendar month which begins after Oct. 26, 1970, see section 401(a), (b) of Pub. L. 91–508, set out as a note under section 1951 of this title.

REGULATIONS

Section 1515(c) of Pub. L. 102–550 provided that: ''The initial final regulations prescribed pursuant to section 21(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1829b(b)(3)] (as added by subsection (a)(2) of this section) shall take effect before January 1, 1994.''

ADDITIONAL CRIMINAL PENALTIES

Willful violation of regulations under this section punishable by fine of not more than $10,000 or imprisonment of not more than five years, or both, when such willful violation is committed in furtherance of the commission of any violation of federal law punishable by imprisonment of more than one year, see section 1957 of this title.

ADMINISTRATIVE PROCEDURE

Administrative procedure and judicial review provisions of subchapter II (§ 551 et seq.) of chapter 5 and

chapter 7 (§ 701 et seq.) of Title 5, Government Organization and Employees, applicable to all proceedings under this section, see section 1959 of this title.

RESPONSIBILITY FOR COMPLIANCE

Responsibility for the Secretary of the Treasury to assure compliance with requirements of this section, and Secretary's authority to delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency, see section 1958 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1953, 1957, 1958, 1959 of this title; title 31 sections 5313, 5318.

§ 1830. Nondiscrimination

It is not the purpose of this chapter to discriminate in any manner against State nonmember banks or State savings associations and in favor of national or member banks or Federal savings associations, respectively. It is the purpose of this chapter to provide all banks and savings associations with the same opportunity to obtain and enjoy the benefits of this chapter.

(Sept. 21, 1950, ch. 967, § 2[22], formerly § 2[20], 64 Stat. 893; renumbered § 2[21], Pub. L. 90–203, § 3, Dec. 15, 1967, 81 Stat. 610; renumbered § 2[22], Pub. L. 91–508, title I, § 101, Oct. 26, 1970, 84 Stat. 1114; amended Pub. L. 101–73, title II, § 223, Aug. 9, 1989, 103 Stat. 273.)

PRIOR PROVISIONS

Section is derived from subsec. (y) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

1989—Pub. L. 101–73 amended section generally. Prior to amendment, section read as follows: ''It is not the purpose of this chapter to discriminate in any manner against State nonmember banks and in favor of national or member banks; but the purpose is to provide all banks with the same opportunity to obtain and enjoy the benefits of this chapter. No bank shall be discriminated against because its capital stock is less than the amount required for eligibility for admission into the Federal Reserve System.''

§ 1831. Separability of certain provisions of this chapter

The provisions of this chapter limiting the insurance of the deposits of any depositor to a maximum less than the full amount shall be independent and separable from each and all of the provisions of this chapter.

(Sept. 21, 1950, ch. 967, § 2[23], formerly § 2[21], 64 Stat. 894; renumbered § 2[22], Pub. L. 90–203, § 3, Dec. 15, 1967, 81 Stat. 610; renumbered § 2[23], Pub. L. 91–508, title I, § 101, Oct. 26, 1970, 84 Stat. 1114.)

PRIOR PROVISIONS

Section is derived from subsec. (z) of former section 264 of this title. See Codification note set out under section 1811 of this title.

§ 1831a. Activities of insured State banks

(a) Permissible activities

(1) In general

After the end of the 1-year period beginning on December 19, 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

(A) the Corporation has determined that the activity would pose no significant risk to the appropriate deposit insurance fund; and

(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) Processing period

(A) In general

The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under this subsection.

(B) Extension of time period

The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(b) Insurance underwriting

(1) In general

Notwithstanding subsection (a) of this section, an insured State bank may not engage in insurance underwriting except to the extent that activity is permissible for national banks.

(2) Exception for certain federally reinsured crop insurance

Notwithstanding any other provision of law, an insured State bank or any of its subsidiaries that provided insurance on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to provide such insurance.

(c) Equity investments by insured State banks

(1) In general

An insured State bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank.

(2) Exception for certain subsidiaries

Paragraph (1) shall not prohibit an insured State bank from acquiring or retaining an equity investment in a subsidiary of which the insured State bank is a majority owner.

(3) Exception for qualified housing projects

(A) Exception

Notwithstanding any other provision of this subsection, an insured State bank may invest as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project.

(B) Limitation

The aggregate of the investments of any insured State bank pursuant to this paragraph shall not exceed 2 percent of the total assets of the bank.

(C) Qualified housing project defined

As used in this paragraph—

(i) Qualified housing project

The term ''qualified housing project'' means residential real estate that is intended to primarily benefit lower income people throughout the period of the investment.

(ii) Lower income

The term ''lower income'' means income that is less than or equal to the median income based on statistics from State or Federal sources.

(4) Transition rule

(A) In general

The Corporation shall require any insured State bank to divest any equity investment the retention of which is not permissible under this subsection as quickly as can be prudently done, and in any event before the end of the 5-year period beginning on December 19, 1991.

(B) Treatment of noncompliance during divestment

With respect to any equity investment held by any insured State bank on December 19, 1991, which was lawfully acquired before December 19, 1991, the bank shall be deemed not to be in violation of the prohibition in this subsection on retaining such investment so long as the bank complies with the applicable requirements established by the Corporation for divesting such investments.

(d) Subsidiaries of insured State banks

(1) In general

After the end of the 1-year period beginning on December 19, 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

(A) the Corporation has determined that the activity poses no significant risk to the appropriate deposit insurance fund; and

(B) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) Insurance underwriting prohibited

(A) Prohibition

Notwithstanding paragraph (1), no subsidiary of an insured State bank may engage in insurance underwriting except to the extent such activities are permissible for national banks.

(B) Continuation of existing activities

Notwithstanding subparagraph (A), a well-capitalized insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on November 21, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

(C) Exception

Subparagraph (A) does not apply to a subsidiary of an insured State bank if—

(i) the insured State bank was required, before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under State law; and

(ii) control of the insured State bank has not changed since that date.

(3) Processing period

(A) In general

The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under this subsection.

(B) Extension of time period

The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(e) Savings bank life insurance

(1) In general

No provision of this chapter shall be construed as prohibiting or impairing the sale or underwriting of savings bank life insurance, or the ownership of stock in a savings bank life insurance company, by any insured bank which—

(A) is located in the Commonwealth of Massachusetts or the State of New York or Connecticut; and

(B) meets applicable consumer disclosure requirements with respect to such insurance.

(2) FDIC finding and action regarding risk

(A) Finding

Before the end of the 1-year period beginning on December 19, 1991, the Corporation shall make a finding whether savings bank life insurance activities of insured banks pose or may pose any significant risk to the insurance fund of which such banks are members.

(B) Actions

(i) In general

The Corporation shall, pursuant to any finding made under subparagraph (A), take appropriate actions to address any risk that exists or may subsequently develop with respect to insured banks described in paragraph (1)(A).

(ii) Authorized actions

Actions the Corporation may take under this subparagraph include requiring the modification, suspension, or termination of insurance activities conducted by any insured bank if the Corporation finds that the activities pose a significant risk to any insured bank described in paragraph (1)(A) or to the insurance fund of which such bank is a member.

(f) Common and preferred stock investment

(1) In general

An insured State bank shall not acquire or retain, directly or indirectly, any equity investment of a type or in an amount that is not permissible for a national bank or is not otherwise permitted under this section.

(2) Exception for banks in certain States

Notwithstanding paragraph (1), an insured State bank may, to the extent permitted by the Corporation, acquire and retain ownership of securities described in paragraph (1) to the extent the aggregate amount of such investment does not exceed an amount equal to 100 percent of the bank's capital if such bank—

(A) is located in a State that permitted, as of September 30, 1991, investment in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.]; and

(B) made or maintained an investment in such securities during the period beginning on September 30, 1990, and ending on November 26, 1991.

(3) Exception for certain types of institutions

Notwithstanding paragraph (1), an insured State bank may—

(A) acquire not more than 10 percent of a corporation that only—

(i) provides directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions; or

(ii) reinsures such policies; and

(B) acquire or retain shares of a depository institution if—

(i) the institution engages only in activities permissible for national banks;

(ii) the institution is subject to examination and regulation by a State bank supervisor;

(iii) 20 or more depository institutions own shares of the institution and none of those institutions owns more than 15 percent of the institution's shares; and

(iv) the institution's shares (other than directors' qualifying shares or shares held under or initially acquired through a plan established for the benefit of the institution's officers and employees) are owned only by the institution.

(4) Transition period for common and preferred stock investments

(A) In general

During each year in the 3-year period beginning on December 19, 1991, each insured State bank shall reduce by not less than 1/3 of its shares (as of December 19, 1991) the bank's ownership of securities in excess of the amount equal to 100 percent of the capital of such bank.

(B) Compliance at end of period

By the end of the 3-year period referred to in subparagraph (A), each insured State bank and each subsidiary of a State bank shall be in compliance with the maximum amount limitations on investments referred to in paragraph (1).

(5) Loss of exception upon acquisition

Any exception applicable under paragraph (2) with respect to any insured State bank shall cease to apply with respect to such bank upon any change in control of such bank or any conversion of the charter of such bank.

(6) Notice and approval

An insured State bank may only engage in any investment pursuant to paragraph (2) if—

(A) the bank has filed a 1-time notice of the bank's intention to acquire and retain investments described in paragraph (1); and

(B) the Corporation has determined, within 60 days of receiving such notice, that acquiring or retaining such investments does not pose a significant risk to the insurance fund of which such bank is a member.

(7) Divestiture

(A) In general

The Corporation may require divestiture by an insured State bank of any investment permitted under this subsection if the Corporation determines that such investment will have an adverse effect on the safety and soundness of the bank.

(B) Reasonable standard

The Corporation shall not require divestiture by any bank pursuant to subparagraph (A) without reason to believe that such investment will have an adverse effect on the safety and soundness of the bank.

(g) Determinations

The Corporation shall make determinations under this section by regulation or order.

(h) "Activity" defined

For purposes of this section, the term ''activity'' includes acquiring or retaining any investment.

(i) Other authority not affected

This section shall not be construed as limiting the authority of any appropriate Federal banking agency or any State supervisory authority to impose more stringent restrictions.

(j) Activities of branches of out-of-State banks

(1) Application of host State law

The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

(2) Activities of branches

An insured State bank that establishes a branch in a host State may conduct any activ-

ity at such branch that is permissible under the laws of the home State of such bank, to the extent such activity is permissible either for a bank chartered by the host State (subject to the restrictions in this section) or for a branch in the host State of an out-of-State national bank.

(3) Savings provision

No provision of this subsection shall be construed as affecting the applicability of—

(A) any State law of any home State under subsection (b), (c), or (d) of section 1831u of this title; or

(B) Federal law to State banks and State bank branches in the home State or the host State.

(4) Definitions

The terms ''host State'', ''home State'', and ''out-of-State bank'' have the same meanings as in section 1831u(f)[1] of this title.

(Sept. 21, 1950, ch. 967, § 2[24], as added Pub. L. 102–242, title III, § 303(a), Dec. 19, 1991, 105 Stat. 2349; amended Pub. L. 102–550, title XVI, § 1605(a)(8), Oct. 28, 1992, 106 Stat. 4086; Pub. L. 103–328, title I, § 102(b)(3)(B), Sept. 29, 1994, 108 Stat. 2351; Pub. L. 104–208, div. A, title II, §§ 2217, 2704(d)(14)(W), Sept. 30, 1996, 110 Stat. 3009–414, 3009–494; Pub. L. 105–24, § 2(a), July 3, 1997, 111 Stat. 238.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (f)(2)(A), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

Section 1831u of this title, referred to in subsec. (j)(4), was subsequently amended, and subsec. (f) of section 1831u no longer defines the terms ''host State'', ''home State'', and ''out-of-State bank''. However, such terms are defined elsewhere in that section.

PRIOR PROVISIONS

A prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Dec. 28, 1979, Pub. L. 96–161, title II, § 202, 93 Stat. 1235, provided that if the applicable rate prescribed in subsec. (a) exceeded the rate a State bank would be permitted to charge in absence of that subsection, that State bank could for a business or agricultural loan of $25,000 or more, notwithstanding State law, take or charge on any evidence of debt, interest of not more than 5 per centum in excess of the discount rate in effect at the Federal Reserve Bank in the district where the bank was located, that the taking or charging of interest at a greater rate than that prescribed by subsec. (a), if knowingly done, would be deemed a forfeit of the entire interest on that particular evidence of debt, and that if such greater rate of interest had already been paid, the payor could recover twice the amount of such payment in a civil action commenced within two years of such payment, prior to repeal by Pub. L. 96–221, title V, § 529, Mar. 31, 1980, 94 Stat. 168, effective at close of Mar. 31, 1980.

Another prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Nov. 5, 1979, Pub. L. 96–104, title I, § 102, 93 Stat. 789, identical to this section as added by Pub. L. 96–161, was repealed by section 212 of Pub. L. 96–161, effective at the close of Dec. 27, 1979, except that its provisions would continue to apply to any loan made in any State on or after Nov. 5, 1979, but prior to such repeal.

Another prior section 1831a, act Sept. 21, 1950, ch. 967, § 2[24], as added Oct. 29, 1974, Pub. L. 93–501, title II, § 202, 88 Stat. 1558, identical to this section as added by Pub. L. 96–104, was repealed by section 1 of Pub. L. 96–104 except that its provisions shall continue to apply to any loan made in any State during the period specified in section 206 of Pub. L. 93–501.

AMENDMENTS

1997—Subsec. (j). Pub. L. 105–24 amended subsec. (j) generally, substituting pars. (1) to (4) for former pars. (1) to (3) relating to general provisions, activities of branches, and definitions, respectively.

1996—Subsec. (a). Pub. L. 104–208, § 2217(1), substituted ''Permissible activities'' for ''In general'' in heading, designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B) of par. (1), respectively, and realigned margins, and added par. (2).

Subsec. (a)(1)(A). Pub. L. 104–208, § 2704(d)(14)(W), which directed substitution of ''Deposit Insurance Fund'' for ''appropriate deposit insurance fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d)(1)(A). Pub. L. 104–208, § 2704(d)(14)(W), which directed substitution of ''Deposit Insurance Fund'' for ''appropriate deposit insurance fund'', was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (d)(3). Pub. L. 104–208, § 2217(2), added par. (3).

1994—Subsec. (j). Pub. L. 103–328 added subsec. (j).

1992—Subsec. (e)(1)(B). Pub. L. 102–550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''meets the consumer disclosure requirements under section 1828(k) of this title with respect to such insurance.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(14)(W) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

RIGHT OF STATE TO OPT OUT

Section 3 of Pub. L. 105–24 provided that: ''Nothing in this Act [amending this section and section 36 of this title and enacting provisions set out as a note under section 1811 of this title] alters the right of States under section 525 of Public Law 96–221 [12 U.S.C. 1785 note].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 330, 1831w of this title.

§ 1831b. Disclosures with respect to certain federally related mortgage loans

(a) Identity of beneficiary interest as condition for a loan; report to Corporation

No insured depository institution, insured branch of a foreign bank, or mutual savings or cooperative bank which is not an insured depository institution, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity

[1] See References in Text note below.

of the person receiving the beneficial interest of such loan shall at all times be revealed to the insured depository institution, insured branch, or bank. At the request of the Corporation, the insured depository institution, insured branch, or bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit.

(b) Enforcement; bank status

In addition to other available remedies, this section may be enforced with respect to mutual savings and cooperative banks which are not insured depository institutions in accordance with section 1818 of this title, and for such purpose such mutual savings and cooperative banks shall be held and considered to be State nonmember insured banks and the appropriate Federal agency with respect to such mutual savings and cooperative banks shall be the Federal Deposit Insurance Corporation.

(Sept. 21, 1950, ch. 967, § 2[25], as added Pub. L. 93–533, § 11(a), Dec. 22, 1974, 88 Stat. 1729; amended Pub. L. 95–369, § 6(c)(30), Sept. 17, 1978, 92 Stat. 620; Pub. L. 101–73, title II, § 201(a), Aug. 9, 1989, 103 Stat. 187; Pub. L. 103–325, title VI, § 602(a)(55), Sept. 23, 1994, 108 Stat. 2290.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325 substituted ''the insured depository institution, insured branch, or bank'' for ''the bank'' in two places.

1989—Pub. L. 101–73 substituted references to insured depository institutions for references to insured banks wherever appearing in this section.

1978—Subsec. (a). Pub. L. 95–369 inserted ''insured branch of a foreign bank'' after ''No insured bank''.

EFFECTIVE DATE

Section effective 180 days after Dec. 22, 1974, see section 20 of Pub. L. 93–533, set out as a note under section 2601 of this title.

EXEMPTIONS; REGULATIONS

Section 11(c) of Pub. L. 93–533 provided that: ''The Federal Deposit Insurance Corporation or the Federal Home Loan Bank Board as appropriate may by regulation exempt classes or types of transactions from the provisions added by this section [enacting this section and section 1730f of this title] if the Corporation or the Board determines that the purposes of such provisions would not be advanced materially by their application to such transactions.''

§ 1831c. Repealed. Pub. L. 103–325, title VI, § 602(f)(1), Sept. 23, 1994, 108 Stat. 2292

Section, act Sept. 21, 1950, ch. 967, § 2[26], as added Nov. 10, 1978, Pub. L. 95–630, title XII, § 1205, 92 Stat. 3711; amended Oct. 15, 1982, Pub. L. 97–320, title I, § 113(p), 96 Stat. 1474; Jan. 12, 1983, Pub. L. 97–457, § 3, 96 Stat. 2507, related to conversion, merger, or consolidation of mutual savings banks into Federal savings banks or savings banks which are insured institutions within meaning of former section 1724 of this title.

§ 1831d. State-chartered insured depository institutions and insured branches of foreign banks

(a) Interest rates

In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

(b) Interest overcharge; forfeiture; interest payment recovery

If the rate prescribed in subsection (a) of this section exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a) of this section, the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a) of this section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

(Sept. 21, 1950, ch. 967, § 2[27], as added Pub. L. 96–221, title V, § 521, Mar. 31, 1980, 94 Stat. 164; amended Pub. L. 100–86, title I, § 101(g)(2), Aug. 10, 1987, 101 Stat. 563; Pub. L. 101–73, title II, § 201(a), Aug. 9, 1989, 103 Stat. 187.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1831a of this title prior to its repeal by Pub. L. 96–221.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–73 substituted ''insured depository institutions'' for ''insured banks''.

1987—Subsec. (a). Pub. L. 100–86 struck out ''and insured mutual savings banks'' after ''insured savings banks''.

EFFECTIVE DATE

Section applicable only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want this section to apply with respect to loans made in such State, except that this section shall apply to a loan made on or after the date such law is adopted or such certification

is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made, see section 525 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1785 of this title.

CHOICE OF HIGHEST APPLICABLE INTEREST RATE

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96–221, section 1735f–7 of this title, or any other provisions of law, including section 85 of this title, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96–221, set out as a note under section 1735f–7a of this title.

DEFINITION OF ''STATE''

For purposes of this section, the term ''State'' to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96–221, set out as a note under section 1735f–7a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1831u of this title.

§ 1831e. Activities of savings associations

(a) In general

On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

(1) the Corporation has determined that the activity would pose no significant risk to the affected deposit insurance fund; and

(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(b) Differences of magnitude between State and Federal powers

Notwithstanding subsection (a)(1) of this section, if an activity (other than an activity described in section 1464(c)(2)(B) of this title) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if—

(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the affected deposit insurance fund; and

(2) the savings association chartered under State law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(c) Equity investments by State savings associations

(1) In general

Notwithstanding subsections (a) and (b) of this section, a savings association chartered under State law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

(2) Exception for service corporations

Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service corporations if—

(A) the Corporation has determined that no significant risk to the affected deposit insurance fund is posed by—

(i) the amount that the association proposes to acquire or retain; or

(ii) the activities in which the service corporation engages; and

(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(3) Transition rule

(A) In general

The Corporation shall require any savings association to divest any equity investment the retention of which is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

(B) Treatment of noncompliance during divestment

With respect to any equity investment held by any savings association on May 1, 1989, the savings association shall be deemed not to be in violation of the prohibition in paragraph (1) or (2) on retaining such investment so long as the savings association complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such investments.

(d) Corporate debt securities not of investment grade

(1) In general

No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security not of investment grade.

(2) Exception for securities held by qualified affiliate

Paragraph (1) shall not apply with respect to any corporate debt security not of investment grade which is acquired and retained by any qualified affiliate of a savings association.

(3) Transition rule

(A) In general

The Corporation shall require any savings association or any subsidiary of any savings association to divest any corporate debt security not of investment grade the retention of which is not permissible under paragraph (1) as quickly as can be prudently done, and in any event not later than July 1, 1994.

(B) Treatment of noncompliance during divestment

With respect to any corporate debt security not of investment grade held by any savings association or subsidiary on August 9, 1989, the savings association or subsidiary shall be deemed not to be in violation of the prohibition in paragraph (1) on retaining

such investment so long as the association or subsidiary complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such securities.

(4) Definitions

For purposes of this section—

(A) Investment grade

Any corporate debt security is not of ''investment grade'' unless that security, when acquired by the savings association or subsidiary, was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.

(B) Qualified affiliate

The term ''qualified affiliate'' means—

(i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and

(ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital.

(C) Certain securities not included

The term ''corporate debt security not of investment grade'' does not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraph (D), (E), or (F) of section 1464(c)(1) of this title.

(e) Transfer of corporate debt security not of investment grade in exchange for a qualified note

(1) Acquisition of note

Notwithstanding subsections (a), (b), and (c) of section 1464[1] of this title and any other provision of Federal or State law governing extensions of credit by savings associations, any insured savings association, and any subsidiary of any insured savings association, that, on August 9, 1989, holds any corporate debt security not of investment grade may acquire a qualified note in exchange for the transfer of such security to—

(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,

if the conditions of paragraph (2) are met.

(2) Conditions for exchange of security for qualified note

The conditions of this paragraph are met if—

(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date—

(i) remains in compliance with applicable capital requirements; or

(ii) adopts and complies with a capital plan acceptable to the Director of the Office of Thrift Supervision;

(B) the company to which the corporate debt security not of investment grade is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

(C) before the end of the 90-day period beginning on August 9, 1989, the insured savings association notifies the Director of the Office of Thrift Supervision of such association's intention to transfer the corporate debt security not of investment grade to the savings and loan holding company or the subsidiary of such holding company;

(D) the transfer of the corporate debt security not of investment grade is completed—

(i) before the end of the 1-year period beginning on August 9, 1989, in the case of an insured savings association that, as of August 9, 1989, is controlled by a savings and loan holding company; or

(ii) before the end of the 2-year period beginning on August 9, 1989, in the case of a savings association that is not, as of August 9, 1989, a subsidiary of a savings and loan holding company;

(E) the insured savings association receives in exchange for the corporate debt security not of investment grade the fair market value of such security;

(F) the Director of the Office of Thrift Supervision has—

(i) approved the transaction; and

(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security not of investment grade and is in compliance with the provisions of this subsection; and

(G) any gain on the sale of the corporate debt security not of investment grade is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of the transferred corporate debt security not of investment grade as carried on the accounts of the insured savings association immediately prior to the transfer.

(3) "Qualified note" defined

The term ''qualified note'' means any note that—

(A) is at all times fully secured by the corporate debt security not of investment grade transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Director of the Office of Thrift Supervision;

(B) contains provisions acceptable to the Director of the Office of Thrift Supervision that would—

(i) prevent any action to encumber or impair the value of the collateral referred to in subparagraph (A); and

[1] So in original. Probably should be section ''1468''.

(ii) allow the sale of the corporate debt security not of investment grade if the proceeds of the sale are reinvested in assets of equivalent value;

(C) is on market terms, including interest rate, which must in all cases be above the insured savings association's borrowing rate for similar term funds;

(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year of repayment were fixed throughout the amortization period;

(F) is fully guaranteed by each holding company of the insured savings association that acquires such note; and

(G) is repaid in full in cash in accordance with its terms and this subsection.

(4) Failure to repay on schedule

The exemption provided by this subsection from subsections (a), (b), and (c) of section 1468 of this title and any other applicable provision of Federal or State law shall terminate immediately if the insured savings association or any affiliate of such association fails to comply with the terms of the qualified note or this subsection.

(f) Determinations

The Corporation shall make determinations under this section by regulation or order.

(g) "Activity" defined

For purposes of subsections (a) and (b) of this section—

(1) In general

The term ''activity'' includes acquiring or retaining any investment.

(2) Divestiture of certain assets

Notwithstanding paragraph (1), subsections (a) and (b) of this section shall not be construed to require a savings association to divest itself of any assets acquired before August 9, 1989.

(h) Other authority not affected

This section may not be construed as limiting—

(1) any other authority of the Corporation; or

(2) any authority of the Director of the Office of Thrift Supervision or of a State to impose more stringent restrictions.

(Sept. 21, 1950, ch. 967, § 2[28], as added Pub. L. 101–73, title II, § 222, Aug. 9, 1989, 103 Stat. 269; amended Pub. L. 102–242, title I, § 151(a)(3), Dec. 19, 1991, 105 Stat. 2284; Pub. L. 103–325, title VI, § 602(a)(56)–(58), Sept. 23, 1994, 108 Stat. 2290, 2291; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(X), Sept. 30, 1996, 110 Stat. 3009–494.)

AMENDMENTS

1996—Subsecs. (a)(1), (b)(1), (c)(2)(A). Pub. L. 104–208, which directed substitution of ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (c)(2)(A)(i). Pub. L. 103–325, § 602(a)(56), substituted ''; or'' for '', or''.

Subsec. (d)(4)(C). Pub. L. 103–325, § 602(a)(57), substituted ''subparagraph'' for ''subparagraphs''.

Subsec. (e)(4). Pub. L. 103–325, § 602(a)(58), substituted ''and any other'' for ''any other''.

1991—Subsecs. (h), (i). Pub. L. 102–242 redesignated subsec. (i) as (h) and struck out former subsec. (h) which required that all savings associations with uninsured deposits disclose in clear and conspicuous statements that its deposits were not insured.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 151(a)(3) of Pub. L. 102–242 provided that the amendment made by that section is effective 1 year after Dec. 19, 1991.

§ 1831f. Brokered deposits

(a) In general

An insured depository institution that is not well capitalized may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into 1 or more deposit accounts.

(b) Renewals and rollovers treated as acceptance of funds

Any renewal of an account in any troubled institution and any rollover of any amount on deposit in any such account shall be treated as an acceptance of funds by such troubled institution for purposes of subsection (a) of this section.

(c) Waiver authority

The Corporation may, on a case-by-case basis and upon application by an insured depository institution which is adequately capitalized (but not well capitalized), waive the applicability of subsection (a) of this section upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution.

(d) Limited exception for certain conservatorships

In the case of any insured depository institution for which the Corporation has been appointed as conservator, subsection (a) of this section shall not apply to the acceptance of deposits (described in such subsection) by such institution if the Corporation determines that the acceptance of such deposits—

(1) is not an unsafe or unsound practice;

(2) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; and

(3) is consistent with the conservator's fiduciary duty to minimize the institution's losses.

Effective 90 days after the date on which the institution was placed in conservatorship, the institution may not accept such deposits.

(e) Restriction on interest rate paid

Any insured depository institution which, under subsection (c) or (d) of this section, ac-

cepts funds obtained, directly or indirectly, by or through a deposit broker, may not pay a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds—

(1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or

(2) the national rate paid on deposits of comparable maturity, as established by the Corporation, for deposits accepted outside the institution's normal market area.

(f) Additional restrictions

The Corporation may impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the Corporation may determine to be appropriate.

(g) Definitions relating to deposit broker

(1) Deposit broker

The term ''deposit broker'' means—

(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(2) Exclusions

The term ''deposit broker'' does not include—

(A) an insured depository institution, with respect to funds placed with that depository institution;

(B) an employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) a trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

(F) the trustee of a testamentary account;

(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) a trustee or custodian of a pension or profitsharing plan qualified under section 401(d) or 403(a) of title 26; or

(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) Inclusion of depository institutions engaging in certain activities

Notwithstanding paragraph (2), the term ''deposit broker'' includes any insured depository institution that is not well capitalized (as defined in section 1831*o* of this title), and any employee of such institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

(4) Employee

For purposes of this subsection, the term ''employee'' means any employee—

(A) who is employed exclusively by the insured depository institution;

(B) whose compensation is primarily in the form of a salary;

(C) who does not share such employee's compensation with a deposit broker; and

(D) whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(h) Deposit solicitation restricted

An insured depository institution that is undercapitalized, as defined in section 1831*o* of this title, shall not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits—

(1) in such institution's normal market areas; or

(2) in the market area in which such deposits would otherwise be accepted.

(Sept. 21, 1950, ch. 967, § 2[29], as added Pub. L. 101–73, title II, § 224(a), Aug. 9, 1989, 103 Stat. 273; amended Pub. L. 102–242, title III, § 301(a), (c), Dec. 19, 1991, 105 Stat. 2343, 2345; Pub. L. 102–550, title XVI, § 1605(a)(1), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 103–325, title III, § 337, Sept. 23, 1994, 108 Stat. 2235.)

AMENDMENTS

1994—Subsec. (g)(3). Pub. L. 103–325 inserted ''that is not well capitalized (as defined in section 1831*o* of this title)'' after ''includes any insured depository institution'', substituted ''of such institution'' for ''of any insured depository institution'', and struck out ''(with respect to such deposits)'' after ''offering rates of interest'' and ''having the same type of charter'' after ''other insured depository institutions''.

1992—Subsec. (a). Pub. L. 102–550, § 1605(a)(1)(A), substituted ''An insured'' for ''A insured''.

Subsec. (c). Pub. L. 102–550, § 1605(a)(1)(B), substituted ''capitalized (but not well capitalized)'' for ''capitalized''.

1991—Subsec. (a). Pub. L. 102–242, § 301(a)(1), substituted ''insured depository institution that is not well capitalized'' for ''troubled institution''.

Subsec. (c). Pub. L. 102–242, § 301(a)(2), substituted ''insured depository institution which is adequately capitalized'' for ''insured depositary institution''.

Subsec. (d). Pub. L. 102–242, § 301(a)(3), added pars. (2) and (3) and closing provisions, struck out ''and'' at end of par. (1), and struck out former par. (2) which read as follows: ''either—

''(A) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; or

''(B) is consistent with the conservator's fiduciary duty to minimize the losses of the institution.''

Subsecs. (e) to (h). Pub. L. 102–242, § 301(a)(4)–(6), (c), added subsec. (e), redesignated former subsec. (e) as (f) and struck out ''troubled'' before ''institution as the'', redesignated former subsecs. (f) and (g) as (g) and (h), respectively, added subsec. (h), and struck out former subsec. (h), as previously redesignated, which defined ''troubled institution''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section 224(b) of Pub. L. 101–73 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to deposits accepted after the end of the 120-day period beginning on the date of the enactment of this Act [Aug. 9, 1989].''

REGULATIONS

Section 301(d) of Pub. L. 102–242 provided that: ''The Corporation shall promulgate final regulations to carry out the amendments made under subsections (a), (b), and (c) [enacting section 1831f–1 of this title and amending this section] not later than 150 days after the date of enactment of this Act [Dec. 19, 1991], and those regulations shall become effective not later than 180 days after that date of enactment, except that such regulations shall not apply to any specific time deposit made before that date of enactment until the stated maturity of the time deposit.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 4313 of this title.

§ 1831f–1. Repealed. Pub. L. 106–569, title XII, § 1203, Dec. 27, 2000, 114 Stat. 3032

Section, act Sept. 21, 1950, ch. 967, § 2[29A], as added Pub. L. 102–242, title III, § 301(b), Dec. 19, 1991, 105 Stat. 2344, related to deposit broker notification and recordkeeping.

§ 1831g. Contracts between depository institutions and persons providing goods, products, or services

(a) In general

An insured depository institution may not enter into a written or oral contract with any person to provide goods, products, or services to or for the benefit of such depository institution if the performance of such contract would adversely affect the safety or soundness of the institution.

(b) Rulemaking

The Corporation shall prescribe such regulations and issue such orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of, and prevent evasions of, this section.

(c) Enforcement

Any action taken by any appropriate Federal banking agency under section 1818 of this title to enforce compliance on the part of any insured depository institution with the requirements of this section may include a requirement that such institution properly reflect the transaction on its books and records.

(d) No private right of action

This section may not be construed as creating any private right of action.

(e) Study

(1) In general

The Attorney General and the Comptroller General of the United States shall jointly conduct a study on the extent to which—

(A) insured depository institutions are entering into contracts with vendors under which the vendors agree to purchase stock or assets from insured depository institutions or to invest capital in or make deposits in such institutions; and

(B) if such practices occur, the extent to which such practices are having an anticompetitive effect and should be prohibited.

(2) Report to Congress

Before the end of the 1-year period beginning on August 9, 1989, the Attorney General and the Comptroller General shall submit a report to the Congress on the results of the study conducted pursuant to paragraph (1).

(Sept. 21, 1950, ch. 967, § 2[30], as added Pub. L. 101–73, title II, § 225, Aug. 9, 1989, 103 Stat. 275; amended Pub. L. 103–325, title VI, § 602(a)(59), Sept. 23, 1994, 108 Stat. 2291.)

AMENDMENTS

1994—Subsec. (e)(1)(A). Pub. L. 103–325 substituted ''the vendors'' for ''venders''.

§ 1831h. Savings Association Insurance Fund Industry Advisory Committee

(a) Establishment

There is hereby established the Savings Association Insurance Fund Industry Advisory Committee (hereinafter referred to in this section as the ''Committee'').

(b) Membership

The Committee shall consist of 18 members, appointed as follows:

(1) 1 member elected from each Federal home loan bank district (by the members of the board of directors of each such bank who were elected by the members of such bank) from among individuals residing therein who are officers of insured depository institutions that are Savings Association Insurance Fund members.

(2) 6 members appointed by the Corporation from among individuals who shall represent the public interest.

(c) Vacancies

Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made.

(d) Pay and expenses

Members of the Committee shall serve without pay, but each member shall be reimbursed, in such manner as the Corporation shall prescribe by regulation, for expenses incurred in connection with attendance of such members at meetings of the Committee.

(e) Terms

Members shall be appointed or elected for terms of 1 year.

(f) Authority of Committee

The Committee may select its Chairperson, Vice Chairperson, and Secretary, and adopt methods of procedure, and shall have power—

(1) to confer with the Board of Directors on general and special business conditions and regulatory and other matters affecting insured financial institutions that are members of the Savings Association Insurance Fund; and

(2) to request information, and to make recommendations, with respect to matters within the jurisdiction of the Corporation.

(g) Meetings

The Committee shall meet 4 times each year, and more frequently if requested by the Corporation.

(h) Reports

The Committee shall submit a semiannual written report to the Committee on Banking, Finance and Urban Affairs of the House and to the Committee on Banking, Housing, and Urban Affairs of the Senate. Such report shall describe the activities of the Committee for such semiannual period and contain such recommendations as the Committee considers appropriate.

(i) Provision of staff and other resources

The Corporation shall provide the Committee with the use of such resources, including staff, as the Committee reasonably shall require to carry out its duties, including the preparation and submission of reports to Congress, under this section.

(j) Federal Advisory Committee Act does not apply

The Federal Advisory Committee Act shall not apply to the Committee.

(k) Sunset

The Committee shall cease to exist 10 years after August 9, 1989.

(Sept. 21, 1950, ch. 967, § 2[31], as added Pub. L. 101–73, title II, § 226, Aug. 9, 1989, 103 Stat. 276; amended Pub. L. 103–325, title VI, § 602(a)(60), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(Y), Sept. 30, 1996, 110 Stat. 3009–494.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (j), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Pub. L. 104–208, which directed repeal of section, was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (b)(1). Pub. L. 103–325 substituted ''board of directors'' for ''Board of Directors''.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208, repealing this section, effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

§ 1831i. Agency disapproval of directors and senior executive officers of insured depository institutions or depository institution holding companies

(a) Prior notice required

An insured depository institution or depository institution holding company shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution or holding company at least 30 days (or such other period, as determined by the appropriate Federal banking agency) before such addition or employment becomes effective, if—

(1) the insured depository institution or depository institution holding company is not in compliance with the minimum capital requirement applicable to such institution or is otherwise in a troubled condition, as determined by such agency on the basis of such institution's or holding company's most recent report of condition or report of examination or inspection; or

(2) the agency determines, in connection with the review by the agency of the plan required under section 1831*o* of this title or otherwise, that such prior notice is appropriate.

(b) Disapproval by agency

An insured depository institution or depository institution holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the appropriate Federal banking agency issues a notice of disapproval of such addition or employment before the end of the notice period, not to exceed 90 days, beginning on the date the agency receives notice of the proposed action pursuant to subsection (a) of this section.

(c) Exception in extraordinary circumstances

(1) In general

Each appropriate Federal banking agency may prescribe by regulation conditions under which the prior notice requirement of subsection (a) of this section may be waived in the event of extraordinary circumstances.

(2) No effect on disapproval authority of agency

Such waivers shall not affect the authority of each agency to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

(d) Additional information

Any notice submitted to an appropriate Federal banking agency with respect to an individ-

ual by any insured depository institution or depository institution holding company pursuant to subsection (a) of this section shall include—

(1) the information described in section 1817(j)(6)(A) of this title about the individual; and

(2) such other information as the agency may prescribe by regulation.

(e) Standard for disapproval

The appropriate Federal banking agency shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) of this section if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be employed by, or associated with, the depository institution or depository institution holding company.

(f) Definition regulations

Each appropriate Federal banking agency shall prescribe by regulation a definition for the terms ''troubled condition'' and ''senior executive officer'' for purposes of subsection (a) of this section.

(Sept. 21, 1950, ch. 967, § 2[32], as added Pub. L. 101–73, title IX, § 914(a), Aug. 9, 1989, 103 Stat. 484; amended Pub. L. 104–208, div. A, title II, § 2209, Sept. 30, 1996, 110 Stat. 3009–409.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2209(1)(A), (B), in introductory provisions, inserted ''(or such other period, as determined by the appropriate Federal banking agency)'' after ''30 days'' and substituted ''if'' for ''if the insured depository institution or depository institution holding company''.

Subsec. (a)(1). Pub. L. 104–208, § 2209(1)(E), inserted ''the insured depository institution or depository institution holding company'' before ''is not in compliance'' and substituted ''; or'' for period at end.

Pub. L. 104–208, § 2209(1)(C), (D), redesignated par. (3) as (1) and struck out former par. (1) which read as follows: ''has been chartered less than 2 years in the case of an insured depository institution;''.

Subsec. (a)(2). Pub. L. 104–208, § 2209(1)(C), (F), added par. (2) and struck out former par. (2) which read as follows: ''has undergone a change in control within the preceding 2 years; or''.

Subsec. (a)(3). Pub. L. 104–208, § 2209(1)(D), redesignated par. (3) as (1).

Subsec. (b). Pub. L. 104–208, § 2209(2), substituted ''notice period, not to exceed 90 days,'' for ''30-day period''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 93, 1464, 1785, 1818, 1828 of this title.

§ 1831j. Depository institution employee protection remedy

(a) In general

(1) Employees of depository institutions

No insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding—

(A) a possible violation of any law or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

by the depository institution or any director, officer, or employee of the institution.

(2) Employees of banking agencies

No Federal banking agency, Federal home loan bank, Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any such agency or bank or to the Attorney General regarding any possible violation of any law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by—

(A) any depository institution or any such bank or agency;

(B) any director, officer, or employee of any depository institution or any such bank;

(C) any officer or employee of the agency which employs such employee; or

(D) the person, or any officer or employee of the person, who employs such employee.

(b) Enforcement

Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) of this section may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the appropriate Federal banking agency.

(c) Remedies

If the district court determines that a violation of subsection (a) of this section has occurred, it may order the depository institution, Federal home loan bank, Federal Reserve bank, or Federal banking agency which committed the violation—

(1) to reinstate the employee to his former position;

(2) to pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) Limitation

The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(e) "Federal banking agency" defined

For purposes of subsections (a) and (c) of this section, the term ''Federal banking agency''

means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision.

(f) Burdens of proof

The legal burdens of proof that prevail under subchapter III of chapter 12 of title 5 shall govern adjudication of protected activities under this section.

(Sept. 21, 1950, ch. 967, § 2[33], as added Pub. L. 101–73, title IX, § 932(a), Aug. 9, 1989, 103 Stat. 494; amended Pub. L. 102–242, title II, § 251(a)(1)–(3), Dec. 19, 1991, 105 Stat. 2331, 2332; Pub. L. 103–204, § 21(a), Dec. 17, 1993, 107 Stat. 2406; Pub. L. 103–325, title VI, § 602(a)(61), (c), Sept. 23, 1994, 108 Stat. 2291.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325, § 602(c), amended directory language of Pub. L. 103–204, § 21(a). See 1993 Amendment note below.

Subsec. (c)(1). Pub. L. 103–325, § 602(a)(61), substituted semicolon for comma at end.

Subsec. (f). Pub. L. 103–325, § 602(c)(1)–(3), amended directory language of Pub. L. 103–204, § 21(a)(1)(B). See 1993 Amendment note below.

1993—Subsec. (a)(1). Pub. L. 103–204, § 21(a)(1)(A), as amended by Pub. L. 103–325, § 602(c)(1)–(3), substituted ''regarding—

''(A) a possible violation of any law or regulation; or

''(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

by the depository institution or any director, officer, or employee of the institution.'' for ''regarding any possible violation of any law or regulation by the depository institution or any director, officer, or employee of the institution.''

Subsec. (a)(2). Pub. L. 103–204, § 21(a)(2)(A), (B), as amended by Pub. L. 103–325, § 602(c)(1), (2), (4), in introductory provisions, substituted ''Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation'' for ''or Federal Reserve bank'' and ''any possible violation of any law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by'' for ''any possible violation of any law or regulation by''.

Subsec. (a)(2)(D). Pub. L. 103–204, § 21(a)(2)(C)–(E), as amended by Pub. L. 103–325, § 602(c)(1), (2), (4), added subpar. (D).

Subsec. (f). Pub. L. 103–204, § 21(a)(1)(B), as amended by Pub. L. 103–325, § 602(c)(1)–(3), added subsec. (f).

1991—Subsec. (a). Pub. L. 102–242, § 251(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No federally insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding a possible violation of any law or regulation by the depository institution or any of its officers, directors, or employees.''

Subsec. (c). Pub. L. 102–242, § 251(a)(2), inserted '', Federal home loan bank, Federal Reserve bank, or Federal banking agency''.

Subsec. (e). Pub. L. 102–242, § 251(a)(3), added subsec. (e).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 251(a)(4) of Pub. L. 102–242 provided that: ''Paragraph (2) of section 33(a) of the Federal Deposit Insurance Act [12 U.S.C. 1831j(a)(2)] (as added under the amendment made by paragraph (1)) shall be treated as having taken effect on January 1, 1987, and for purposes of any cause of action arising under such paragraph (as so effective) before the date of the enactment of this Act [Dec. 19, 1991], the 2-year period referred to in section 33(b) of such Act shall be deemed to begin on such date of enactment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1790c of this title; title 31 section 5328.

§ 1831k. Reward for information leading to recoveries or civil penalties

(a) In general

An appropriate Federal banking agency, with the concurrence of the Attorney General, may pay a reward to a person who provides original information which leads to—

(1) recovery of a criminal fine, restitution, or civil penalty—

(A) under—

(i) this chapter;

(ii) the Federal Credit Union Act [12 U.S.C. 1751 et seq.];

(iii) section 93(b), 164, or 481 to 485 of this title;

(iv) the Federal Reserve Act [12 U.S.C. 221 et seq.];

(v) the Bank Holding Company Act Amendments of 1970;

(vi) the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.];

(vii) the Home Owners' Loan Act [12 U.S.C. 1461 et seq.]; or

(viii) section 3663 of title 18 pursuant to a conviction for an offense referred to in subparagraph (B) of this paragraph,

(B) pursuant to a conviction for an offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18 affecting a depository institution insured by the Federal Deposit Insurance Corporation, or for a conspiracy to commit such an offense; or

(C) under section 1833a of this title; or

(2) a forfeiture under section 981 or 982 of title 18 that arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation.

(b) Percentage limitation

An appropriate Federal banking agency may not pay a reward under subsection (a) of this section of more than 25 percent of the amount of the fine, penalty, restitution, or forfeiture or $100,000, whichever is less.

(c) Officials and persons ineligible

An appropriate Federal banking agency may not pay a reward under subsection (a) of this section to—

(1) an officer or employee of the United States or of a State or local government who provides information described in subsection (a) of this section, obtained in the performance of official duties; or

(2) a person who—

(A) deliberately causes or participates in the alleged violation of law or regulation, or

(B) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(d) Nonreviewability

Any agency decision under this section is final and not reviewable by any court.

(Sept. 21, 1950, ch. 967, § 2[34], as added Pub. L. 101–73, title IX, § 933(a), Aug. 9, 1989, 103 Stat. 495; amended Pub. L. 101–647, title XXV, § 2586, Nov. 29, 1990, 104 Stat. 4903; Pub. L. 103–325, title VI, § 602(a)(62), (63), Sept. 23, 1994, 108 Stat. 2291.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(1)(A)(ii), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Federal Reserve Act, referred to in subsec. (a)(1)(A)(iv), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

The Bank Holding Company Act Amendments of 1970, referred to in subsec. (a)(1)(A)(v), is Pub. L. 91–607, Dec. 31, 1970, 84 Stat. 1760, as amended. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1841 of this title and Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (a)(1)(A)(vi), is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Home Owners' Loan Act, referred to in subsec. (a)(1)(A)(vii), is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§ 1461 et seq.) of this title. For complete classification of this Act to the Code, see section 1461 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(1)(A)(iii). Pub. L. 103–325, § 602(a)(62), substituted "section" for "sections" and "or" for "and".

Subsec. (a)(2). Pub. L. 103–325, § 602(a)(63), inserted period at end.

1990—Subsec. (a)(1). Pub. L. 101–647, § 2586(1), struck out ", in an amount that exceeds $50,000," after "recovery" in introductory provisions.

Subsec. (a)(2). Pub. L. 101–647, § 2586(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "a forfeiture under section 981 or 982 of title 18 that—

"(A) arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation; and

"(B) exceeds $50,000."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4205, 4225 of this title.

§ 1831*l*. Coordination of risk analysis between SEC and Federal banking agencies

Any appropriate Federal banking agency shall notify the Securities and Exchange Commission of any concerns of the agency regarding significant financial or operational risks to any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency (as defined in section 78c of title 15), resulting from the activities of any insured depository institution, any depository institution holding company, or any affiliate of any such institution or company if such broker, dealer, municipal securities dealer, government securities broker, or government securities dealer is an affiliate of any such institution, company, or affiliate.

(Sept. 21, 1950, ch. 967, § 2[35], as added Pub. L. 101–432, § 7, Oct. 16, 1990, 104 Stat. 975.)

§ 1831m. Early identification of needed improvements in financial management

(a) Annual report on financial condition and management

(1) Report required

Each insured depository institution shall submit an annual report to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State).

(2) Contents of report

Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b) of this section; and

(ii) an independent public accountant under subsections (c) and (d) of this section; and

(B) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the financial condition and management of the institution.

(3) Public availability

Any annual report required under paragraph (1) shall be available for public inspection. Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.

(b) Management responsibility for financial statements and internal controls

Each insured depository institution shall prepare—

(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

(2) a report signed by the chief executive officer and the chief accounting or financial officer of the institution which contains—

(A) a statement of the management's responsibilities for—

(i) preparing financial statements;

(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(iii) complying with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency; and

(B) an assessment, as of the end of the institution's most recent fiscal year, of—

(i) the effectiveness of such internal control structure and procedures; and

(ii) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency.

(c) Internal control evaluation and reporting requirements for independent public accountants

(1) In general

With respect to any internal control report required by subsection (b)(2) of this section of any institution, the institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in such report.

(2) Attestation requirements

Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

(d) Annual independent audits of financial statements

(1) Audits required

The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 1831n of this title.

(2) Scope of audit

In connection with any audit under this subsection, the independent public accountant shall determine and report whether the financial statements of the institution—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

(3) Requirements for insured subsidiaries of holding companies

The requirements for an independent audit under this subsection may be satisfied for insured depository institutions that are subsidiaries of a holding company by an independent audit of the holding company.

(e) Repealed. Pub. L. 104–208, div. A, title II, § 2301(a), Sept. 30, 1996, 110 Stat. 3009–419

(f) Form and content of reports and auditing standards

(1) In general

The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

(2) Consultation

The Corporation shall consult with the other appropriate Federal banking agencies in implementing this subsection.

(g) Improved accountability

(1) Independent audit committee

(A) Establishment

Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, except as provided in subparagraph (D), and who satisfy any specific requirements the Corporation may establish.

(B) Duties

An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections (b)(2), (c), and (d) of this section.

(C) Criteria applicable to committees of large insured depository institutions

In the case of each insured depository institution which the Corporation determines to be a large institution, the audit committee required by subparagraph (A) shall—

(i) include members with banking or related financial management expertise;

(ii) have access to the committee's own outside counsel; and

(iii) not include any large customers of the institution.

(D) Exemption authority

(i) In general

An appropriate Federal banking agency may, by order or regulation, permit the independent audit committee of an insured depository institution to be made up of less than all, but no fewer than a majority of, outside directors, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the internal audit committee of the institution.

(ii) Factors to be considered

In determining whether an insured depository institution has encountered hardships referred to in clause (i), the appropriate Federal banking agency shall consider factors such as the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors to the board of directors of the institution who may serve on the internal audit committee.

(2) Review of quarterly reports of large insured depository institutions

(A) In general

In the case of any insured depository institution which the Corporation has determined to be a large institution, the Corporation may require the independent public ac-

countant retained by such institution to perform reviews of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

(B) Report to audit committee

The independent public accountant referred to in subparagraph (A) shall provide the audit committee of the insured depository institution with reports on the reviews under such subparagraph and the audit committee shall provide such reports to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor.

(C) Limitation on notice

Reports provided under subparagraph (B) shall be only for the information and use of the insured depository institution, the Corporation, any appropriate Federal banking agency, and any State bank supervisor that received the report.

(D) Notice to institution

The Corporation shall promptly notify an insured depository institution, in writing, of a determination pursuant to subparagraph (A) to require a review of such institution's quarterly financial reports.

(3) Qualifications of independent public accountants

(A) In general

All audit services required by this section shall be performed only by an independent public accountant who—

(i) has agreed to provide related working papers, policies, and procedures to the Corporation, any appropriate Federal banking agency, and any State bank supervisor, if requested; and

(ii) has received a peer review that meets guidelines acceptable to the Corporation.

(B) Reports on peer reviews

Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

(4) Enforcement actions

(A) In general

In addition to any authority contained in section 1818 of this title, the Corporation or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section.

(B) Joint rulemaking

The appropriate Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

(5) Notice by accountant of termination of services

Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the institution shall promptly notify the Corporation and each appropriate Federal banking agency pursuant to such rules as the Corporation and each appropriate Federal banking agency shall prescribe.

(h) Exchange of reports and information

(1) Report to the independent auditor

(A) In general

Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this chapter or any other provision of law) and a copy of the most recent report of examination received by the institution.

(B) Additional information

In addition to the copies of the reports required to be provided under subparagraph (A), each insured depository institution shall provide the auditor with—

(i) a copy of any supervisory memorandum of understanding with such institution and any written agreement between such institution and any appropriate Federal banking agency or any appropriate State bank supervisor which is in effect during the period covered by the audit; and

(ii) a report of—

(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 1818 of this title;

(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

(III) any assessment of any civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

(2) Reports to banking agencies

(A) Independent auditor reports

Each insured depository institution shall provide to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report within 15 days of receipt of any such report, qualification, or letter from the institution's independent auditors.

(B) Notice of change of auditor

Each insured depository institution shall provide written notification to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor of the resignation or dismissal of the institution's independent auditor or the engagement of a new independent auditor by the institution, including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.

(i) Requirements for insured subsidiaries of holding companies

(1) In general

Except with respect to any audit requirements established under or pursuant to sub-

section (d) of this section, the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

(A) services and functions comparable to those required under this section are provided at the holding company level; and

(B) the institution—

(i) has total assets, as of the beginning of such fiscal year, of less than $5,000,000,000; or

(ii) has—

(I) total assets, as of the beginning of such fiscal year, of $5,000,000,000, or more; and

(II) a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

(2) Large institutions

For purposes of this subsection, in the case of an insured depository institution described in paragraph (1)(B)(ii) that the Corporation determines to be a large institution, the audit committee of the holding company of such an institution shall not include any large customers of the institution.

(3) Applicability based on risk to fund

The appropriate Federal banking agency may require an institution with total assets in excess of $9,000,000,000 to comply with this section, notwithstanding the exemption provided by this subsection, if it determines that such exemption would create a significant risk to the affected deposit insurance fund if applied to that institution.

(j) Exemption for small depository institutions

This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

(1) $150,000,000; or

(2) such amount (in excess of $150,000,000) as the Corporation may prescribe by regulation.

(Sept. 21, 1950, ch. 967, § 2[36], as added Pub. L. 102–242, title I, § 112(a), Dec. 19, 1991, 105 Stat. 2242; amended Pub. L. 102–550, title XVI, § 1603(b)(3), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 103–325, title III, § 314, Sept. 23, 1994, 108 Stat. 2221; Pub. L. 104–208, div. A, title II, §§ 2301, 2704(d)(14)(Z), Sept. 30, 1996, 110 Stat. 3009–419, 3009–494.)

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–208, § 2301(c), inserted at end ''Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.''

Subsec. (e). Pub. L. 104–208, § 2301(a), inserted ''[Repealed]'' and struck out heading and text of subsec. (e). Text read as follows:

''(1) IN GENERAL—An independent public accountant shall apply procedures agreed upon by the Corporation to objectively determine the extent of the compliance of any insured depository institution or depository institution holding company with laws and regulations designated by the Corporation, in consultation with the appropriate Federal banking agencies.

''(2) ATTESTATION REQUIREMENTS—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.''

Subsec. (g)(1)(A). Pub. L. 104–208, § 2301(b)(1), inserted '', except as provided in subparagraph (D)'' after ''management of the institution''.

Subsec. (g)(1)(D). Pub. L. 104–208, § 2301(b)(2), added subpar. (D).

Subsec. (i)(3). Pub. L. 104–208, § 2704(d)(14)(Z), which directed substitution of ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (g)(2)(D). Pub. L. 103–325, § 314(b), added subpar. (D).

Subsec. (i). Pub. L. 103–325, § 314(a), inserted par. (1) designation and heading before ''Except with respect to'', redesignated former par. (1) as subpar. (A) of par. (1), added subpar. (B) of par. (1) and pars. (2) and (3), and struck out former par. (2) which read as follows: ''either—

''(A) the institution has total assets, as of the beginning of such fiscal year, of less than $5,000,000,000; or

''(B) the institution—

''(i) has total assets, as of the beginning of such fiscal year, of more than $5,000,000,000 and less than $9,000,000,000; and

''(ii) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.''

1992—Subsec. (b)(2)(A)(iii). Pub. L. 102–550, § 1603(b)(3)(A), substituted ''Corporation and'' for ''Corporation or''.

Subsec. (g)(3)(A)(i). Pub. L. 102–550, § 1603(b)(3)(B), substituted ''any appropriate'' for ''an appropriate''.

Subsec. (g)(5). Pub. L. 102–550, § 1603(b)(3)(C), inserted ''and each appropriate Federal banking agency'' after ''Corporation'' in two places.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(14)(Z) of Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section 112(c), formerly 112(b), of Pub. L. 102–242, as redesignated by Pub. L. 102–550, title XVI, § 1603(b)(2)(A), Oct. 28, 1992, 106 Stat. 4079, provided that: ''The requirements established by the amendment made by subsection (a) [enacting this section] shall apply with respect to fiscal years of insured depository institutions which begin after December 31, 1992.''

§ 1831m–1. Reports of information regarding safety and soundness of depository institutions

(a) Reports to appropriate Federal banking agencies

(1) In general

The Attorney General, the Secretary of the Treasury, and the head of any other agency or

instrumentality of the United States shall, unless otherwise prohibited by law, disclose to the appropriate Federal banking agency any information that the Attorney General, the Secretary of the Treasury, or such agency head believes raises significant concerns regarding the safety or soundness of any depository institution doing business in the United States.

(2) Exceptions

(A) Intelligence information

(i) In general

The Director of Central Intelligence shall disclose to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury, shall disclose the intelligence information to the appropriate Federal banking agency.

(ii) Procedures for receipt of intelligence information

Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for receipt of intelligence information that are adequate to protect the intelligence information.

(B) Criminal investigations, safety of Government investigators, informants, and witnesses

If the Attorney General, the Secretary of the Treasury or their respective designees determines that the disclosure of information pursuant to paragraph (1) may jeopardize a pending civil investigation or litigation, or a pending criminal investigation or prosecution, may result in serious bodily injury or death to Government employees, informants, witnesses or their respective families, or may disclose sensitive investigative techniques and methods, the Attorney General or the Secretary of the Treasury shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation, litigation, or prosecution, threatening serious bodily injury or death to Government employees, informants, or witnesses or their respective families, or disclosing sensitive investigation techniques and methods; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) Grand jury investigations; criminal procedure

Paragraph (1) shall not—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) Procedures for receipt of disclosure reports

(1) In general

Within 90 days after October 28, 1992, each appropriate Federal banking agency shall establish procedures for receipt of a disclosure report by an agency or instrumentality made in accordance with subsection (a)(1) of this section. The procedures established in accordance with this subsection shall ensure adequate protection of information disclosed, including access control and information accountability.

(2) Procedures related to each disclosure report

Upon receipt of a report in accordance with subsection (a)(1) of this section, the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that made the disclosure regarding the adequacy of the procedures established pursuant to paragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information disclosed.

(c) Effect on agencies

This section does not impose an affirmative duty on the Attorney General, the Secretary of the Treasury, or the head of any agency or instrumentality of the United States to collect new or to review existing information.

(d) Definitions

For purposes of this section, the terms ''appropriate Federal banking agency'' and ''depository institution'' have the same meanings as in section 1818 of this title.

(Pub. L. 102–550, title XV, § 1542, Oct. 28, 1992, 106 Stat. 4067; Pub. L. 105–362, title X, § 1001(f), Nov. 10, 1998, 112 Stat. 3292.)

REFERENCES IN TEXT

Rule 6 of the Federal Rules of Criminal Procedure, referred to in subsec. (a)(2)(C)(ii), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

CODIFICATION

Section was enacted as part of the Annunzio-Wylie Anti-Money Laundering Act and also as part of the Housing and Community Development Act of 1992, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1998—Subsec. (e). Pub. L. 105–362 struck out heading and text of subsec. (e). Text read as follows: ''The Attorney General and the Secretary of the Treasury shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, not later than 90 days after the end of each calendar year on their utilization of the exceptions provided in subsection (a)(1)(B) of this section.''

§ 1831n. Accounting objectives, standards, and requirements

(a) In general

(1) Objectives

Accounting principles applicable to reports or statements required to be filed with Federal banking agencies by insured depository institutions should—

(A) result in financial statements and reports of condition that accurately reflect the capital of such institutions;

(B) facilitate effective supervision of the institutions; and

(C) facilitate prompt corrective action to resolve the institutions at the least cost to the insurance funds.

(2) Standards

(A) Uniform accounting principles consistent with GAAP

Subject to the requirements of this chapter and any other provision of Federal law, the accounting principles applicable to reports or statements required to be filed with Federal banking agencies by all insured depository institutions shall be uniform and consistent with generally accepted accounting principles.

(B) Stringency

If the appropriate Federal banking agency or the Corporation determines that the application of any generally accepted accounting principle to any insured depository institution is inconsistent with the objectives described in paragraph (1), the agency or the Corporation may, with respect to reports or statements required to be filed with such agency or Corporation, prescribe an accounting principle which is applicable to such institutions which is no less stringent than generally accepted accounting principles.

(3) Review and implementation of accounting principles required

Before the end of the 1-year period beginning on December 19, 1991, each appropriate Federal banking agency shall take the following actions:

(A) Review of accounting principles

Review—

(i) all accounting principles used by depository institutions with respect to reports or statements required to be filed with a Federal banking agency;

(ii) all requirements established by the agency with respect to such accounting procedures; and

(iii) the procedures and format for reports to the agency, including reports of condition.

(B) Modification of noncomplying measures

Modify or eliminate any accounting principle or reporting requirement of such Federal agency which the agency determines fails to comply with the objectives and standards established under paragraphs (1) and (2).

(C) Inclusion of "off balance sheet" items

Develop and prescribe regulations which require that all assets and liabilities, including contingent assets and liabilities, of insured depository institutions be reported in, or otherwise taken into account in the preparation of any balance sheet, financial statement, report of condition, or other report of such institution, required to be filed with a Federal banking agency.

(b) Uniform accounting of capital standards

(1) In general

Each appropriate Federal banking agency shall maintain uniform accounting standards to be used for determining compliance with statutory or regulatory requirements of depository institutions.

(2) Transition provision

Any standards in effect on December 19, 1991, under section 1833d[1] of this title shall continue in effect after December 19, 1991, until amended by the appropriate Federal banking agency under paragraph (1).

(c) Reports to banking committees

(1) Annual reports required

The Federal banking agencies shall jointly submit an annual report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing a description of any difference between any accounting or capital standard used by any such agency and any accounting or capital standard used by any other agency.

(2) Explanation of reasons for discrepancy

Each report submitted under paragraph (1) shall contain an explanation of the reasons for any discrepancy between any accounting or capital standard used by any such agency and any accounting or capital standard used by any other agency.

(3) Publication

Each report under this subsection shall be published in the Federal Register.

(Sept. 21, 1950, ch. 967, § 2[37], as added Pub. L. 102–242, title I, § 121(a), Dec. 19, 1991, 105 Stat. 2250; amended Pub. L. 106–569, title XII, §§ 1221, 1223, Dec. 27, 2000, 114 Stat. 3036.)

REFERENCES IN TEXT

Section 1833d, referred to in subsec. (b)(2), was repealed by Pub. L. 102–242, title I, § 121(b), Dec. 19, 1991, 105 Stat. 2251.

AMENDMENTS

2000—Subsec. (a)(3)(D). Pub. L. 106–569, § 1221, struck out heading and text of subpar. (D). Text read as follows: "Develop jointly with the other appropriate Federal banking agencies a method for insured depository institutions to provide supplemental disclosure of the estimated fair market value of assets and liabilities, to the extent feasible and practicable, in any balance sheet, financial statement, report of condition, or other report of any insured depository institution required to be filed with a Federal banking agency."

Subsec. (c)(1). Pub. L. 106–569, § 1223, substituted "The Federal banking agencies shall jointly submit an annual report" for "Each appropriate Federal banking

[1] See References in Text note below.

agency shall annually submit a report'' and inserted ''any'' before ''such agency''.

Subsec. (c)(2). Pub. L. 106–569, § 1223(2), inserted ''any'' before ''such agency''.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

RISK-WEIGHTING OF HOUSING LOANS FOR PURPOSES OF CAPITAL REQUIREMENTS

Pub. L. 102–233, title VI, § 618, Dec. 12, 1991, 105 Stat. 1789, provided that:

''(a) SINGLE FAMILY HOUSING LOANS.—

''(1) 50 PERCENT RISK-WEIGHTED CLASSIFICATION.—

''(a)[(A)] IN GENERAL.—To provide consistent regulatory treatment of loans made for the construction of single family housing, not later than the expiration of the 120-day period beginning on the date of this Act [probably means date of enactment, Dec. 12, 1991] each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that any single family residence construction loan described under subparagraph (B) shall be considered as a loan within the 50 percent risk-weighted category.

''(B) REQUIREMENTS.—Subparagraph (A) shall apply to any construction loan—

''(i) made for the construction of a residence consisting of 1 to 4 dwelling units;

''(ii) under which the lender has acquired from the lender originating the mortgage loan for purchase of the residence, before the making of the construction loan—

''(I) documentation demonstrating that the buyer of the residence intends to purchase the residence and has the ability to obtain a mortgage loan sufficient to purchase the residence; and

''(II) any other documentation from the mortgage lender that the appropriate Federal banking agency may consider appropriate to provide assurance of the buyer's intent to purchase the property (including written commitments and letters of intent);

''(iii) under which the borrower requires the buyer of the residence to make a nonrefundable deposit to the borrower in an amount (as determined by the appropriate Federal banking agency) of not less than 1 percent of the principal amount of mortgage loan obtained by the borrower for purchase of the residence, for use in defraying costs relating to any cancellation of the purchase contract of the buyer; and

''(iv) that meets any other underwriting characteristics that the appropriate Federal banking agency may establish, consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions.

''(2) 100 PERCENT RISK-WEIGHTED CLASSIFICATION.—Not later than the expiration of the 120-day period beginning on the date of this Act [Dec. 12, 1991] each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that—

''(A) any single family residence construction loan for a residence for which the purchase contract is canceled shall be considered as a loan within the 100 percent risk-weighted category; and

''(B) the lender of any single family residence construction loan shall promptly notify the appropriate Federal banking agency of any such cancellation.

''(b) MULTIFAMILY HOUSING LOANS.—

''(1) 50 PERCENT RISK-WEIGHTED CLASSIFICATION.—

''(A) IN GENERAL.—To provide consistent regulatory treatment of loans made for the purchase of multifamily rental and homeowner properties, not later than the expiration of the 120-day period beginning on the date of this Act [Dec. 12, 1991] each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that any multifamily housing loan described under subparagraph (B) and any security collateralized by such a loan shall be considered as a loan or security within the 50 percent risk-weighted category.

''(B) REQUIREMENTS.—Subparagraph (A) shall apply to any loan—

''(i) secured by a first lien on a residence consisting of more than 4 dwelling units;

''(ii) under which—

''(I) the rate of interest does not change over the term of the loan, (b) the principal obligation does not exceed 80 percent of the appraised value of the property, and (c) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 120 percent; or

''(II) the rate of interest changes over the term of the loan, (b) the principal obligation does not exceed 75 percent of the appraised value of the property, and (c) the ratio of annual net operating income generated by the property (before payment of any debt service on the loan) to annual debt service on the loan is not less than 115 percent;

''(iii) under which—

''(I) amortization of principal and interest occurs over a period of not more than 30 years;

''(II) the minimum maturity for repayment of principal is not less than 7 years; and

''(III) timely payment of all principal and interest, in accordance with the terms of the loan, occurs for a period of not less than 1 year; and

''(iv) that meets any other underwriting characteristics that the appropriate Federal banking agency may establish, consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions.

''(2) SALE PURSUANT TO PRO RATA LOSS SHARING ARRANGEMENTS.—Not later than the expiration of the 120-day period beginning on the date of this Act [Dec. 12, 1991], each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to provide that any loan fully secured by a first lien on a multifamily housing property that is sold subject to a pro rata loss sharing arrangement by an institution subject to the jurisdiction of the agency shall be treated as sold to the extent that loss is incurred by the purchaser of the loan. For purposes of this paragraph, the term 'pro rata loss sharing arrangement' means an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on a pro rata basis.

''(3) SALE PURSUANT TO OTHER ARRANGEMENTS FOR LOSS.—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 12, 1991], each Federal banking agency shall amend the regulations and guidelines of the agency establishing minimum acceptable capital levels to take into account other loss sharing arrangements, in connection with the sale by an institution subject

to the jurisdiction of the agency of any loan that is fully secured by a first lien on multifamily housing property, for purposes of determining the extent to which such loans shall be treated as sold. For purposes of this paragraph, the term 'other loss sharing arrangement' means an agreement providing that the purchaser of a loan shares in any loss incurred on the loan with the selling institution on other than a pro rata basis.

''(c) APPROPRIATE FEDERAL BANKING AGENCY.—For purposes of this section, the term 'Federal banking agency' means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1831m of this title.

§ 1831*o*. Prompt corrective action

(a) Resolving problems to protect deposit insurance funds

(1) Purpose

The purpose of this section is to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund.

(2) Prompt corrective action required

Each appropriate Federal banking agency and the Corporation (acting in the Corporation's capacity as the insurer of depository institutions under this chapter) shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

(b) Definitions

For purposes of this section:

(1) Capital categories

(A) Well capitalized

An insured depository institution is ''well capitalized'' if it significantly exceeds the required minimum level for each relevant capital measure.

(B) Adequately capitalized

An insured depository institution is ''adequately capitalized'' if it meets the required minimum level for each relevant capital measure.

(C) Undercapitalized

An insured depository institution is ''undercapitalized'' if it fails to meet the required minimum level for any relevant capital measure.

(D) Significantly undercapitalized

An insured depository institution is ''significantly undercapitalized'' if it is significantly below the required minimum level for any relevant capital measure.

(E) Critically undercapitalized

An insured depository institution is ''critically undercapitalized'' if it fails to meet any level specified under subsection (c)(3)(A) of this section.

(2) Other definitions

(A) Average

(i) In general

The ''average'' of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(ii) Agency may permit weekly averaging for certain institutions

In the case of insured depository institutions that have total assets of less than $300,000,000 and normally file reports of condition reflecting weekly (rather than daily) averages of accounting items, the appropriate Federal banking agency may provide that the ''average'' of an accounting item during a given period means the sum of that item at the close of business on the relevant business day each week during that period divided by the total number of weeks in that period.

(B) Capital distribution

The term ''capital distribution'' means—

(i) a distribution of cash or other property by any insured depository institution or company to its owners made on account of that ownership, but not including—

(I) any dividend consisting only of shares of the institution or company or rights to purchase such shares; or

(II) any amount paid on the deposits of a mutual or cooperative institution that the appropriate Federal banking agency determines is not a distribution for purposes of this section;

(ii) a payment by an insured depository institution or company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance an affiliated company's acquisition of those shares or interests; or

(iii) a transaction that the appropriate Federal banking agency or the Corporation determines, by order or regulation, to be in substance a distribution of capital to the owners of the insured depository institution or company.

(C) Capital restoration plan

The term ''capital restoration plan'' means a plan submitted under subsection (e)(2) of this section.

(D) Company

The term ''company'' has the same meaning as in section 1841 of this title.

(E) Compensation

The term ''compensation'' includes any payment of money or provision of any other thing of value in consideration of employment.

(F) Relevant capital measure

The term ''relevant capital measure'' means the measures described in subsection (c) of this section.

(G) Required minimum level

The term ''required minimum level'' means, with respect to each relevant capital measure, the minimum acceptable capital

level specified by the appropriate Federal banking agency by regulation.

(H) Senior executive officer

The term ''senior executive officer'' has the same meaning as the term ''executive officer'' in section 375b of this title.

(I) Subordinated debt

The term ''subordinated debt'' means debt subordinated to the claims of general creditors.

(c) Capital standards

(1) Relevant capital measures

(A) In general

Except as provided in subparagraph (B)(ii), the capital standards prescribed by each appropriate Federal banking agency shall include—

(i) a leverage limit; and

(ii) a risk-based capital requirement.

(B) Other capital measures

An appropriate Federal banking agency may, by regulation—

(i) establish any additional relevant capital measures to carry out the purpose of this section; or

(ii) rescind any relevant capital measure required under subparagraph (A) upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of this section.

(2) Capital categories generally

Each appropriate Federal banking agency shall, by regulation, specify for each relevant capital measure the levels at which an insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.

(3) Critical capital

(A) Agency to specify level

(i) Leverage limit

Each appropriate Federal banking agency shall, by regulation, in consultation with the Corporation, specify the ratio of tangible equity to total assets at which an insured depository institution is critically undercapitalized.

(ii) Other relevant capital measures

The agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which an insured depository institution is critically undercapitalized.

(B) Leverage limit range

The level specified under subparagraph (A)(i) shall require tangible equity in an amount—

(i) not less than 2 percent of total assets; and

(ii) except as provided in clause (i), not more than 65 percent of the required minimum level of capital under the leverage limit.

(C) FDIC's concurrence required

The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a level under subparagraph (A)(i) lower than that specified by the Corporation for State nonmember insured banks.

(d) Provisions applicable to all institutions

(1) Capital distributions restricted

(A) In general

An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.

(B) Exception

Notwithstanding subparagraph (A), the appropriate Federal banking agency may permit, after consultation with the Corporation, an insured depository institution to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the institution in at least an equivalent amount; and

(ii) will reduce the institution's financial obligations or otherwise improve the institution's financial condition.

(2) Management fees restricted

An insured depository institution shall pay no management fee to any person having control of that institution if, after making the payment, the institution would be undercapitalized.

(e) Provisions applicable to undercapitalized institutions

(1) Monitoring required

Each appropriate Federal banking agency shall—

(A) closely monitor the condition of any undercapitalized insured depository institution;

(B) closely monitor compliance with capital restoration plans, restrictions, and requirements imposed under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized insured depository institution to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) Capital restoration plan required

(A) In general

Any undercapitalized insured depository institution shall submit an acceptable capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

(B) Contents of plan

The capital restoration plan shall—

(i) specify—

(I) the steps the insured depository institution will take to become adequately capitalized;

(II) the levels of capital to be attained during each year in which the plan will be in effect;

(III) how the institution will comply with the restrictions or requirements then in effect under this section; and

(IV) the types and levels of activities in which the institution will engage; and

(ii) contain such other information as the appropriate Federal banking agency may require.

(C) Criteria for accepting plan

The appropriate Federal banking agency shall not accept a capital restoration plan unless the agency determines that—

(i) the plan—

(I) complies with subparagraph (B);

(II) is based on realistic assumptions, and is likely to succeed in restoring the institution's capital; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed; and

(ii) if the insured depository institution is undercapitalized, each company having control of the institution has—

(I) guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of 4 consecutive calendar quarters; and

(II) provided appropriate assurances of performance.

(D) Deadlines for submission and review of plans

The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 45 days after the institution becomes undercapitalized;

(ii) require the agency to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted; and

(iii) require the agency to submit a copy of any plan approved by the agency to the Corporation before the end of the 45-day period beginning on the date such approval is granted.

(E) Guarantee liability limited

(i) In general

The aggregate liability under subparagraph (C)(ii) of all companies having control of an insured depository institution shall be the lesser of—

(I) an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized; or

(II) the amount which is necessary (or would have been necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with a plan under this subsection.

(ii) Certain affiliates not affected

This paragraph may not be construed as—

(I) requiring any company not having control of an undercapitalized insured depository institution to guarantee, or otherwise be liable on, a capital restoration plan;

(II) requiring any person other than an insured depository institution to submit a capital restoration plan; or

(III) affecting compliance by brokers, dealers, government securities brokers, and government securities dealers with the financial responsibility requirements of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and regulations and orders thereunder.

(3) Asset growth restricted

An undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(A) the appropriate Federal banking agency has accepted the institution's capital restoration plan;

(B) any increase in total assets is consistent with the plan; and

(C) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the institution to become adequately capitalized within a reasonable time.

(4) Prior approval required for acquisitions, branching, and new lines of business

An undercapitalized insured depository institution shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business unless—

(A) the appropriate Federal banking agency has accepted the insured depository institution's capital restoration plan, the institution is implementing the plan, and the agency determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Board of Directors determines that the proposed action will further the purpose of this section.

(5) Discretionary safeguards

The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take actions described in any subparagraph of subsection (f)(2) of this section if the agency determines that those actions are necessary to carry out the purpose of this section.

(f) Provisions applicable to significantly undercapitalized institutions and undercapitalized institutions that fail to submit and implement capital restoration plans

(1) In general

This subsection shall apply with respect to any insured depository institution that—

(A) is significantly undercapitalized; or

(B) is undercapitalized and—

(i) fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (e)(2)(D) of this section; or

(ii) fails in any material respect to implement a plan accepted by the agency.

(2) Specific actions authorized

The appropriate Federal banking agency shall carry out this section by taking 1 or more of the following actions:

(A) Requiring recapitalization

Doing 1 or more of the following:

(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will be adequately capitalized after the sale.

(ii) Further requiring that instruments sold under clause (i) be voting shares.

(iii) Requiring the institution to be acquired by a depository institution holding company, or to combine with another insured depository institution, if 1 or more grounds exist for appointing a conservator or receiver for the institution.

(B) Restricting transactions with affiliates

(i) Requiring the institution to comply with section 371c of this title as if subsection (d)(1) of that section (exempting transactions with certain affiliated institutions) did not apply.

(ii) Further restricting the institution's transactions with affiliates.

(C) Restricting interest rates paid

(i) In general

Restricting the interest rates that the institution pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located, as determined by the agency.

(ii) Retroactive restrictions prohibited

This subparagraph does not authorize the agency to restrict interest rates paid on time deposits made before (and not renewed or renegotiated after) the agency acted under this subparagraph.

(D) Restricting asset growth

Restricting the institution's asset growth more stringently than subsection (e)(3) of this section, or requiring the institution to reduce its total assets.

(E) Restricting activities

Requiring the institution or any of its subsidiaries to alter, reduce, or terminate any activity that the agency determines poses excessive risk to the institution.

(F) Improving management

Doing 1 or more of the following:

(i) New election of directors

Ordering a new election for the institution's board of directors.

(ii) Dismissing directors or senior executive officers

Requiring the institution to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 1818 of this title.

(iii) Employing qualified senior executive officers

Requiring the institution to employ qualified senior executive officers (who, if the agency so specifies, shall be subject to approval by the agency).

(G) Prohibiting deposits from correspondent banks

Prohibiting the acceptance by the institution of deposits from correspondent depository institutions, including renewals and rollovers of prior deposits.

(H) Requiring prior approval for capital distributions by bank holding company

Prohibiting any bank holding company having control of the insured depository institution from making any capital distribution without the prior approval of the Board of Governors of the Federal Reserve System.

(I) Requiring divestiture

Doing one or more of the following:

(i) Divestiture by the institution

Requiring the institution to divest itself of or liquidate any subsidiary if the agency determines that the subsidiary is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(ii) Divestiture by parent company of nondepository affiliate

Requiring any company having control of the institution to divest itself of or liquidate any affiliate other than an insured depository institution if the appropriate Federal banking agency for that company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(iii) Divestiture of institution

Requiring any company having control of the institution to divest itself of the institution if the appropriate Federal banking agency for that company determines that divestiture would improve the institution's financial condition and future prospects.

(J) Requiring other action

Requiring the institution to take any other action that the agency determines will better carry out the purpose of this section than any of the actions described in this paragraph.

(3) Presumption in favor of certain actions

In complying with paragraph (2), the agency shall take the following actions, unless the agency determines that the actions would not further the purpose of this section:

(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating to requiring the sale of shares or obligations, or requiring the institution to be acquired by or combine with another institution).

(B) The action described in paragraph (2)(B)(i) (relating to restricting transactions with affiliates).

(C) The action described in paragraph (2)(C) (relating to restricting interest rates).

(4) Senior executive officers' compensation restricted

(A) In general

The insured depository institution shall not do any of the following without the prior written approval of the appropriate Federal banking agency:

(i) Pay any bonus to any senior executive officer.

(ii) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the institution became undercapitalized.

(B) Failing to submit plan

The appropriate Federal banking agency shall not grant any approval under subparagraph (A) with respect to an institution that has failed to submit an acceptable capital restoration plan.

(5) Discretion to impose certain additional restrictions

The agency may impose 1 or more of the restrictions prescribed by regulation under subsection (i) of this section if the agency determines that those restrictions are necessary to carry out the purpose of this section.

(6) Consultation with other regulators

Before the agency or Corporation makes a determination under paragraph (2)(I) with respect to an affiliate that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the agency or Corporation shall consult with the Securities and Exchange Commission and, in the case of any other affiliate which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such affiliate with respect to the proposed determination of the agency or the Corporation and actions pursuant to such determination.

(g) More stringent treatment based on other supervisory criteria

(1) In general

If the appropriate Federal banking agency determines (after notice and an opportunity for hearing) that an insured depository institution is in an unsafe or unsound condition or, pursuant to section 1818(b)(8) of this title, deems the institution to be engaging in an unsafe or unsound practice, the agency may—

(A) if the institution is well capitalized, reclassify the institution as adequately capitalized;

(B) if the institution is adequately capitalized (but not well capitalized), require the institution to comply with 1 or more provisions of subsections (d) and (e) of this section, as if the institution were undercapitalized; or

(C) if the institution is undercapitalized, take any 1 or more actions authorized under subsection (f)(2) of this section as if the institution were significantly undercapitalized.

(2) Contents of plan

Any plan required under paragraph (1) shall specify the steps that the insured depository institution will take to correct the unsafe or unsound condition or practice. Capital restoration plans shall not be required under paragraph (1)(B).

(h) Provisions applicable to critically undercapitalized institutions

(1) Activities restricted

Any critically undercapitalized insured depository institution shall comply with restrictions prescribed by the Corporation under subsection (i) of this section.

(2) Payments on subordinated debt prohibited

(A) In general

A critically undercapitalized insured depository institution shall not, beginning 60 days after becoming critically undercapitalized, make any payment of principal or interest on the institution's subordinated debt.

(B) Exceptions

The Corporation may make exceptions to subparagraph (A) if—

(i) the appropriate Federal banking agency has taken action with respect to the insured depository institution under paragraph (3)(A)(ii); and

(ii) the Corporation determines that the exception would further the purpose of this section.

(C) Limited exemption for certain subordinated debt

Until July 15, 1996, subparagraph (A) shall not apply with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(D) Accrual of interest

Subparagraph (A) does not prevent unpaid interest from accruing on subordinated debt under the terms of that debt, to the extent otherwise permitted by law.

(3) Conservatorship, receivership, or other action required

(A) In general

The appropriate Federal banking agency shall, not later than 90 days after an insured

depository institution becomes critically undercapitalized—

(i) appoint a receiver (or, with the concurrence of the Corporation, a conservator) for the institution; or

(ii) take such other action as the agency determines, with the concurrence of the Corporation, would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

(B) Periodic redeterminations required

Any determination by an appropriate Federal banking agency under subparagraph (A)(ii) to take any action with respect to an insured depository institution in lieu of appointing a conservator or receiver shall cease to be effective not later than the end of the 90-day period beginning on the date that the determination is made and a conservator or receiver shall be appointed for that institution under subparagraph (A)(i) unless the agency makes a new determination under subparagraph (A)(ii) at the end of the effective period of the prior determination.

(C) Appointment of receiver required if other action fails to restore capital

(i) In general

Notwithstanding subparagraphs (A) and (B), the appropriate Federal banking agency shall appoint a receiver for the insured depository institution if the institution is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized.

(ii) Exception

Notwithstanding clause (i), the appropriate Federal banking agency may continue to take such other action as the agency determines to be appropriate in lieu of such appointment if—

(I) the agency determines, with the concurrence of the Corporation, that (aa) the insured depository institution has positive net worth, (bb) the insured depository institution has been in substantial compliance with an approved capital restoration plan which requires consistent improvement in the institution's capital since the date of the approval of the plan, (cc) the insured depository institution is profitable or has an upward trend in earnings the agency projects as sustainable, and (dd) the insured depository institution is reducing the ratio of nonperforming loans to total loans; and

(II) the head of the appropriate Federal banking agency and the Chairperson of the Board of Directors both certify that the institution is viable and not expected to fail.

(i) Restricting activities of critically undercapitalized institutions

To carry out the purpose of this section, the Corporation shall, by regulation or order—

(1) restrict the activities of any critically undercapitalized insured depository institution; and

(2) at a minimum, prohibit any such institution from doing any of the following without the Corporation's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency.

(B) Extending credit for any highly leveraged transaction.

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order.

(D) Making any material change in accounting methods.

(E) Engaging in any covered transaction (as defined in section 371c(b) of this title).

(F) Paying excessive compensation or bonuses.

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas.

(j) Certain Government-controlled institutions exempted

Subsections (e) through (i) of this section (other than paragraph (3) of subsection (e) of this section) shall not apply—

(1) to an insured depository institution for which the Corporation or the Resolution Trust Corporation is conservator; or

(2) to a bridge bank, none of the voting securities of which are owned by a person or agency other than the Corporation or the Resolution Trust Corporation.

(k) Review required when deposit insurance fund incurs material loss

(1) In general

If a deposit insurance fund incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

(i) ascertain why the institution's problems resulted in a material loss to the deposit insurance fund; and

(ii) make recommendations for preventing any such loss in the future; and

(B) provide a copy of the report to—

(i) the Comptroller General of the United States;

(ii) the Corporation (if the agency is not the Corporation);

(iii) in the case of a State depository institution, the appropriate State banking supervisor; and

(iv) upon request by any Member of Congress, to that Member.

(2) Material loss incurred

For purposes of this subsection:

(A) Loss incurred

A deposit insurance fund incurs a loss with respect to an insured depository institution—

(i) if the Corporation provides any assistance under section 1823(c) of this title with respect to that institution; and—

(I) it is not substantially certain that the assistance will be fully repaid not later than 24 months after the date on which the Corporation initiated the assistance; or

(II) the institution ceases to repay the assistance in accordance with its terms; or

(ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of the deposit insurance fund's outlays with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(B) Material loss

A loss is material if it exceeds the greater of—

(i) $25,000,000; or

(ii) 2 percent of the institution's total assets at the time the Corporation initiated assistance under section 1823(c) of this title or was appointed receiver.

(3) Deadline for report

The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

(A) If the institution is described in paragraph (2)(A)(i), during the 6-month period beginning on the earlier of—

(i) the date on which the institution ceases to repay assistance under section 1823(c) of this title in accordance with its terms, or

(ii) the date on which it becomes apparent that the assistance will not be fully repaid during the 24-month period described in paragraph (2)(A)(i).

(B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of the deposit insurance fund's outlays with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(4) Public disclosure required

(A) In general

The appropriate Federal banking agency shall disclose the report upon request under section 552 of title 5 without excising—

(i) any portion under section 552(b)(5) of that title; or

(ii) any information about the insured depository institution under paragraph (4) (other than trade secrets) or paragraph (8) of section 552(b) of that title.

(B) Exception

Subparagraph (A) does not require the agency to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could reasonably be ascertained.

(5) GAO review

The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate, review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section).

(6) Transition rule

During the period beginning on July 1, 1993, and ending on June 30, 1997, a loss incurred by the Corporation with respect to an insured depository institution—

(A) with respect to which the Corporation initiates assistance under section 1823(c) of this title during the period in question, or

(B) for which the Corporation was appointed receiver during the period in question,

is material for purposes of this subsection only if that loss exceeds the greater of $25,000,000 or the applicable percentage of the institution's total assets at that time, set forth in the following table:

For the following period:	The applicable percentage is:
July 1, 1993–June 30, 1994	7 percent
July 1, 1994–June 30, 1995	5 percent
July 1, 1995–June 30, 1996	4 percent
July 1, 1996–June 30, 1997	3 percent.

(*l*) Implementation

(1) Regulations and other actions

Each appropriate Federal banking agency shall prescribe such regulations (in consultation with the other Federal banking agencies), issue such orders, and take such other actions as are necessary to carry out this section.

(2) Written determination and concurrence required

Any determination or concurrence by an appropriate Federal banking agency or the Corporation required under this section shall be written.

(m) Other authority not affected

This section does not limit any authority of an appropriate Federal banking agency, the Corporation, or a State to take action in addition to (but not in derogation of) that required under this section.

(n) Administrative review of dismissal orders

(1) Timely petition required

A director or senior executive officer dismissed pursuant to an order under subsection (f)(2)(F)(ii) of this section may obtain review of that order by filing a written petition for reinstatement with the appropriate Federal banking agency not later than 10 days after receiving notice of the dismissal.

(2) Procedure

(A) Hearing required

The agency shall give the petitioner an opportunity to—

(i) submit written materials in support of the petition; and

(ii) appear, personally or through counsel, before 1 or more members of the agency or designated employees of the agency.

(B) Deadline for hearing

The agency shall—

(i) schedule the hearing referred to in subparagraph (A)(ii) promptly after the petition is filed; and

(ii) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(C) Deadline for decision

Not later than 60 days after the date of the hearing, the agency shall—

(i) by order, grant or deny the petition;

(ii) if the order is adverse to the petitioner, set forth the basis for the order; and

(iii) notify the petitioner of the order.

(3) Standard for review of dismissal orders

The petitioner shall bear the burden of proving that the petitioner's continued employment would materially strengthen the insured depository institution's ability—

(A) to become adequately capitalized, to the extent that the order is based on the institution's capital level or failure to submit or implement a capital restoration plan; and

(B) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on subsection (g)(1) of this section.

(*o*) Transition rules for savings associations

(1) RTC's role does not diminish care required of OTS

(A) In general

In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 1441a(b)(3)(A) of this title.

(B) Reports

Subparagraph (A) does not require reports under subsection (k) of this section.

(2) Additional flexibility for certain savings associations

Subsections (e)(2), (f), and (h) of this section shall not apply before July 1, 1994, to any insured savings association if—

(A) before December 19, 1991—

(i) the savings association had submitted a plan meeting the requirements of section 1464(t)(6)(A)(ii) of this title; and

(ii) the Director of the Office of Thrift Supervision had accepted the plan;

(B) the plan remains in effect; and

(C) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

(Sept. 21, 1950, ch. 967, § 2[38], as added Pub. L. 102–242, title I, § 131(a), Dec. 19, 1991, 105 Stat. 2253; amended Pub. L. 102–550, title XVI, § 1603(d)(1), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 103–325, title VI, § 602(a)(64), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 104–208, div. A, title II, § 2704(d)(14)(AA)–(CC), Sept. 30, 1996, 110 Stat. 3009–494; Pub. L. 104–316, title I, § 106(d), Oct. 19, 1996, 110 Stat. 3831.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (e)(2)(E)(ii)(III), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–208, § 2704(d)(14)(AA), which directed substitution of "fund" for "funds" in heading, was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (k)(1). Pub. L. 104–208, § 2704(d)(14)(BB)(i), which directed substitution of "the Deposit Insurance Fund" for "a deposit insurance fund", was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (k)(2)(A). Pub. L. 104–208, § 2704(d)(14)(BB)(ii), which directed substitution of "The Deposit Insurance Fund" for "A deposit insurance fund" in introductory provisions and "the outlays of the Deposit Insurance Fund" for "the deposit insurance fund's outlays" in cl. (ii), was not executed. See Effective Date of 1996 Amendment note below.

Subsec. (k)(5). Pub. L. 104–316 amended heading and text of par. (5) generally. Prior to amendment, text read as follows: "The General Accounting Office shall annually—

"(A) review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section); and

"(B) verify the accuracy of 1 or more of those reports."

Subsec. (*o*). Pub. L. 104–208, § 2704(d)(14)(CC), which directed the amendment of subsec. (*o*) by striking par. (1) and the par. designation and heading of par. (2), redesignating subpars. (A) to (C) as pars. (1) to (3), respectively, and cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigning margins, was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (f)(6). Pub. L. 103–325 substituted "Commission" for "Commisssion".

1992—Subsec. (e)(2)(D)(i). Pub. L. 102–550, § 1603(d)(1)(A), struck out "and" after semicolon at end.

Subsec. (f)(6). Pub. L. 102–550, § 1603(d)(1)(B), (D), in heading substituted "other regulators" for "functional regulators" and in text substituted "appropriate regulator" for "functional regulator (as defined in section 1841(s) of this title)".

Subsec. (g)(1)(B). Pub. L. 102–550, § 1603(d)(1)(C), substituted "capitalized (but not well capitalized)" for "capitalized".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improve-

ment Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102–242 effective after Dec. 19, 1992, then amendment by Pub. L. 102–550 effective on effective date of amendment by Pub. L. 102–242, see section 1609 of Pub. L. 102–550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section effective 1 year after Dec. 19, 1991, see section 131(f) of Pub. L. 102–242, set out as an Effective Date of 1991 Amendment note under section 1464 of this title.

REGULATIONS

Section 131(b) of Pub. L. 102–242 provided that: ''Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) (and the Corporation, acting in the Corporation's capacity as insurer of depository institutions under that Act [12 U.S.C. 1811 et seq.]) shall, after notice and opportunity for comment, promulgate final regulations under section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*] (as added by subsection (a)) not later than 9 months after the date of enactment of this Act [Dec. 19, 1991], and those regulations shall become effective not later than 1 year after that date of enactment.''

DEPOSIT OF INSURANCE PROCEEDS

Pub. L. 105–18, title V, § 50003, June 12, 1997, 111 Stat. 211, provided that:

''(a) IN GENERAL.—The appropriate Federal banking agency may, by order, permit an insured depository institution to subtract from the institution's total assets, in calculating compliance with the leverage limit prescribed under section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*], an amount not exceeding the qualifying amount attributable to insurance proceeds, if the agency determines that—

''(1) the institution—

''(A) had its principal place of business within an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, on the day before the date of any such determination;

''(B) derives more than 60 percent of its total deposits from persons who normally reside within, or whose principal place of business is normally within, areas of intense devastation caused by the major disaster;

''(C) was adequately capitalized (as defined in section 38 of the Federal Deposit Insurance Act) before the major disaster; and

''(D) has an acceptable plan for managing the increase in its total assets and total deposits; and

''(2) the subtraction is consistent with the purpose of section 38 of the Federal Deposit Insurance Act.

''(b) TIME LIMIT ON EXCEPTIONS.—Any exception made under this section shall expire not later than February 28, 1999.

''(c) DEFINITIONS.—For purposes of this section:

''(1) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

''(2) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(3) LEVERAGE LIMIT.—The term 'leverage limit' has the same meaning as in section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*].

''(4) QUALIFYING AMOUNT ATTRIBUTABLE TO INSURANCE PROCEEDS.—The term 'qualifying amount attributable to insurance proceeds' means the amount (if any) by which the institution's total assets exceed the institution's average total assets during the calendar quarter ending before the date of any determination referred to in subsection (a)(1)(A), because of the deposit of insurance payments or governmental assistance made with respect to damage caused by, or other costs resulting from, the major disaster.''

Similar provisions were contained in the following prior acts:

Pub. L. 103–76, § 3, Aug. 12, 1993, 107 Stat. 753.

Pub. L. 102–485, § 4, Oct. 23, 1992, 106 Stat. 2772.

TRANSITION RULE REGARDING CURRENT DIRECTORS AND SENIOR EXECUTIVE OFFICERS

Section 131(e) of Pub. L. 102–242 provided that:

''(1) DISMISSAL FROM OFFICE.—Section 38(f)(2)(F)(ii) of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*(f)(2)(F)(ii)] (as added by subsection (a)) shall not apply with respect to—

''(A) any director whose current term as a director commenced on or before the date of enactment of this Act [Dec. 19, 1991] and has not been extended—

''(i) after that date of enactment, or

''(ii) to evade section 38(f)(2)(F)(ii); or

''(B) any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

''(i) after that date of enactment, or

''(ii) to evade section 38(f)(2)(F)(ii).

''(2) RESTRICTING COMPENSATION.—Section 38(f)(4) of the Federal Deposit Insurance Act [12 U.S.C. 1831*o*(f)(4)] (as added by subsection (a)) shall not apply with respect to any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act [Dec. 19, 1991] and whose contract of employment has not been renewed or renegotiated—

''(A) after that date of enactment, or

''(B) to evade section 38(f)(4).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 24a, 347b, 371d, 1464, 1790d, 1817, 1818, 1820, 1821, 1828, 1831f, 1831i, 1831p–1, 1831u, 1835, 1841, 1842, 4806 of this title; title 15 section 1607.

§ 1831p. Transferred

CODIFICATION

Section, act Sept. 21, 1950, ch. 967, § 2[39], as added Dec. 19, 1991, Pub. L. 102–242, title II, § 228, 105 Stat. 2308, which related to notice of branch closure, was renumbered section 2[42] of act Sept. 21, 1950, by Pub. L. 102–550, title XI, § 1602(a), Oct. 28, 1992, 106 Stat. 4079, and transferred to section 1831r–1 of this title.

§ 1831p–1. Standards for safety and soundness

(a) Operational and managerial standards

Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards relating to—

(A) internal controls, information systems, and internal audit systems, in accordance with section 1831m of this title;

(B) loan documentation;

(C) credit underwriting;

(D) interest rate exposure;

(E) asset growth; and

(F) compensation, fees, and benefits, in accordance with subsection (c) of this section; and

(2) such other operational and managerial standards as the agency determines to be appropriate.

(b) Asset quality, earnings, and stock valuation standards

Each appropriate Federal banking agency shall prescribe standards, by regulation or guideline, for all insured depository institutions relating to asset quality, earnings, and stock valuation that the agency determines to be appropriate.

(c) Compensation standards

Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards prohibiting as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that—

(A) would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits; or

(B) could lead to material financial loss to the institution;

(2) standards specifying when compensation, fees, or benefits referred to in paragraph (1) are excessive, which shall require the agency to determine whether the amounts are unreasonable or disproportionate to the services actually performed by the individual by considering—

(A) the combined value of all cash and noncash benefits provided to the individual;

(B) the compensation history of the individual and other individuals with comparable expertise at the institution;

(C) the financial condition of the institution;

(D) comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(E) for postemployment benefits, the projected total cost and benefit to the institution;

(F) any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

(G) other factors that the agency determines to be relevant; and

(3) such other standards relating to compensation, fees, and benefits as the agency determines to be appropriate.

(d) Standards to be prescribed

(1) In general

Standards under subsections (a), (b), and (c) of this section shall be prescribed by regulation or guideline. Such regulations or guidelines may not prescribe standards that set a specific level or range of compensation for directors, officers, or employees of insured depository institutions.

(2) Applicability of other laws

Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to restrict the level of compensation, including golden parachute payments (as defined in section 1828(k)(4) of this title), paid to any director, officer, or employee of an insured depository institution under any other provision of law.

(3) Senior executive officers at undercapitalized institutions

Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to restrict compensation paid to any senior executive officer of an undercapitalized insured depository institution pursuant to section 1831*o* of this title.

(4) Safety and soundness or enforcement actions

Paragraph (1) shall not be construed as affecting the authority of any appropriate Federal banking agency under any provision of this chapter other than this section, or under any other provision of law, to prescribe a specific level or range of compensation for any director, officer, or employee of an insured depository institution—

(A) to preserve the safety and soundness of the institution; or

(B) in connection with any action under section 1818 of this title or any order issued by the agency, any agreement between the agency and the institution, or any condition imposed by the agency in connection with the agency's approval of an application or other request by the institution, which is enforceable under section 1818 of this title.

(e) Failure to meet standards

(1) Plan required

(A) In general

If the appropriate Federal banking agency determines that an insured depository institution fails to meet any standard prescribed under subsection (a) or (b) of this section—

(i) if such standard is prescribed by regulation of the agency, the agency shall require the institution to submit an acceptable plan to the agency within the time allowed by the agency under subparagraph (C); and

(ii) if such standard is prescribed by guideline, the agency may require the institution to submit a plan described in clause (i).

(B) Contents of plan

Any plan required under subparagraph (A) shall specify the steps that the institution will take to correct the deficiency. If the institution is undercapitalized, the plan may be part of a capital restoration plan.

(C) Deadlines for submission and review of plans

The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide institutions and companies with reasonable time to submit plans required under subparagraph (A), and generally require the institution to submit a plan not later than 30 days after the agen-

cy determines that the institution fails to meet any standard prescribed under subsection (a), (b), or (c) of this section; and

(ii) require the agency to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

(2) Order required if institution fails to submit or implement plan

If an insured depository institution fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the appropriate Federal banking agency, the agency, by order—

(A) shall require the institution to correct the deficiency; and

(B) may do 1 or more of the following until the deficiency has been corrected:

(i) Prohibit the institution from permitting its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the institution may increase from one calendar quarter to another.

(ii) Require the institution to increase its ratio of tangible equity to assets.

(iii) Take the action described in section 1831*o*(f)(2)(C) of this title.

(iv) Require the institution to take any other action that the agency determines will better carry out the purpose of section 1831*o* of this title than any of the actions described in this subparagraph.

(3) Restrictions mandatory for certain institutions

In complying with paragraph (2), the appropriate Federal banking agency shall take 1 or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

(A) the agency determines that the insured depository institution fails to meet any standard prescribed under subsection (a)(1) or (b)(1) of this section;

(B) the institution has not corrected the deficiency; and

(C) either—

(i) during the 24-month period before the date on which the institution first failed to meet the standard—

(I) the institution commenced operations; or

(II) 1 or more persons acquired control of the institution; or

(ii) during the 18-month period before the date on which the institution first failed to meet the standard, the institution underwent extraordinary growth, as defined by the agency.

(f) Definitions

For purposes of this section, the terms ''average'' and ''capital restoration plan'' have the same meanings as in section 1831*o* of this title.

(g) Other authority not affected

The authority granted by this section is in addition to any other authority of the Federal banking agencies.

(Sept. 21, 1950, ch. 967, § 2[39], as added Pub. L. 102–242, title I, § 132(a), Dec. 19, 1991, 105 Stat. 2267; amended Pub. L. 102–550, title IX, § 956, Oct. 28, 1992, 106 Stat. 3895; Pub. L. 103–325, title III, § 318(a)–(c), Sept. 23, 1994, 108 Stat. 2223, 2224.)

CODIFICATION

Section was formerly classified to section 1831s of this title.

Another section 2[39] of act Sept. 21, 1950, was renumbered section 2[42] and is classified to section 1831r–1 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–325, § 318(c)(1), struck out ''and depository institution holding companies'' before '', prescribe'' in introductory provisions.

Subsec. (b). Pub. L. 103–325, § 318(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe—

''(1) standards specifying—

''(A) a maximum ratio of classified assets to capital;

''(B) minimum earnings sufficient to absorb losses without impairing capital; and

''(C) to the extent feasible, a minimum ratio of market value to book value for publicly traded shares of the institution or company; and

''(2) such other standards relating to asset quality, earnings, and valuation as the agency determines to be appropriate.''

Subsec. (d). Pub. L. 103–325, § 318(b)(1), struck out ''by regulation'' after ''Standards to be prescribed'' in heading.

Subsec. (d)(1). Pub. L. 103–325, § 318(b)(2), inserted ''or guideline'' before period at end of first sentence and inserted ''or guidelines'' after ''Such regulations'' in second sentence.

Subsec. (e)(1)(A). Pub. L. 103–325, § 318(c)(2)(A)–(C), struck out ''or depository institution holding company'' after ''insured depository institution'', substituted ''or (b) of this section—

''(i) if such standard is prescribed by regulation of the agency, the agency shall require''

for ''or (b) of this section the agency shall require'', struck out ''or company'' before ''to submit an acceptable plan'', substituted ''; and'' for period at end of cl. (i), and added cl. (ii).

Subsec. (e)(1)(B), (C). Pub. L. 103–325, § 318(c)(2)(A), struck out ''or company'' before ''will take to correct'' in subpar. (B) and before ''to submit a plan'' and ''fails to meet any standard'' in subpar. (C).

Subsec. (e)(2). Pub. L. 103–325, § 318(c)(2)(B), struck out ''or depository institution holding company'' after ''insured depository institution'' in introductory provisions.

Subsec. (e)(2)(A), (B). Pub. L. 103–325, § 318(c)(2)(A), struck out ''or company'' after ''institution'' wherever appearing.

1992—Subsec. (d). Pub. L. 102–550, § 956(1), added subsec. (d) and struck out former subsec. (d) which read as follows: ''Standards under subsections (a), (b), and (c) of this section shall be prescribed by regulation.''

Subsec. (e)(1)(A). Pub. L. 102–550, § 956(2), substituted ''(a) or (b)'' for ''(a), (b), or (c)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 318(d) of Pub. L. 103–325 provided that: ''The amendments made by this section [amending this section] shall be construed to have the same effective date as section 39 of the Federal Deposit Insurance Act [this section], as provided in section 132(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102–242, set out as an Effective Date note below].''

EFFECTIVE DATE

Section 132(c) of Pub. L. 102–242 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on the earlier of—

''(1) the date on which final regulations promulgated in accordance with subsection (b) [set out below] become effective [Final rules were published July 10, 1995, 60 F.R. 35674, eff. Aug. 9, 1995.]; or

''(2) December 1, 1993.''

REGULATIONS

Section 132(b) of Pub. L. 102–242 provided that: ''Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) shall promulgate final regulations under section 39 of the Federal Deposit Insurance Act [12 U.S.C. 1831p–1] (as added by subsection (a)) not later than August 1, 1993.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1464, 1818 of this title; title 15 section 6805.

§ 1831q. FDIC affordable housing program

(a) Purpose

The purpose of this section is to provide homeownership and rental housing opportunities for very low-income, low-income, and moderate-income families.

(b) Funding and limitations of program

(1) Duration of program

The provisions of this section shall be effective, subject to the provisions of paragraph (2), only during the 3-year period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A).

(2) Annual fiscal limitations

(A) In general

In each fiscal year during the 3-year period referred to in paragraph (1), the provisions of this section shall apply only—

(i) to such extent or in such amounts as are provided in appropriations Acts for any losses resulting during the fiscal year from the sale of properties under this section, except that such amounts for losses may not exceed $30,000,000 in any fiscal year; and

(ii) to the extent that amounts are provided in appropriations Acts pursuant to subparagraph (C) for any other costs relating to the program under this section.

(B) Definition of losses

For purposes of this paragraph, the amount of losses resulting from the sale of properties under this section during any fiscal year shall be the amount equal to the sum of any affordable housing discounts reasonably anticipated to accrue during the fiscal year.

(C) Authorization of appropriations

There are authorized to be appropriated, for each fiscal year during the 3-year period referred to in paragraph (1), such sums as may be necessary for any costs of the program under this section other than losses resulting from the sale of properties under this section.

(D) Other definitions

For purposes of this paragraph:

(i) Affordable housing discount

The term ''affordable housing discount'' means, with respect to any eligible residential or eligible condominium property transferred under this section by the Corporation, the difference (if any) between the realizable disposition value of the property and the actual sale price of the property under this section.

(ii) Realizable disposition value

The term ''realizable disposition value'' means the estimated sale price that the Corporation reasonably would be able to obtain upon the sale of a property by the Corporation under the provisions of this chapter, not including this section, and any other applicable laws. Not later than the expiration of the 120-day period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A), the Corporation shall establish, and publish in the Federal Register, procedures for determining the realizable disposition value of a property transferred under this section, which shall take into consideration such factors as the Corporation considers appropriate, including the actual sale prices of properties disposed of by the Resolution Trust Corporation under section 1441a(c) of this title, the prices of other properties sold under similar programs, and the appraised value of the property transferred under this section. Until such procedures are established, the Corporation may consider the realizable disposition value of any eligible residential or condominium property to be equal to the appraised value of the property.

(3) Existing contracts

The provisions of this section shall not apply to any eligible residential property or any eligible condominium property that is subject to an agreement entered into by the Corporation before the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A) that provides for any other disposition of the property.

(c) Rules governing disposition of eligible single family properties

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

(2) Offers to sell to nonprofit organizations, public agencies, and qualifying households

During the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to—

(A) qualifying households (including qualifying households with members who are veterans); or

(B) public agencies or nonprofit organizations that agree to (i) make the property available for occupancy by and maintain it as affordable for low-income families (including low-income families with members who are veterans) for the remaining useful life of such property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (4), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months.

The restrictions described in clause (i) of subparagraph (B) shall be contained in the deed or other recorded instrument. If, upon the expiration of such 180-day period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to low-income families and to low-income families with members who are veterans.

(3) Recapture of profits from resale

Except as provided in paragraph (4), if any eligible single family property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (2)(B)(ii), subsection (j)(3)(A) of this section, or subsection (k)(2) of this section, is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or low-income family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(4) Exceptions to recapture requirement

(A) Relocation

The Corporation may in its discretion waive the applicability (i) to any qualifying household of the requirement under paragraph (3) and the requirements relating to residency of a qualifying household under subparagraphs (B) and (C) of subsection (p)(12) of this section, and (ii) to any low-income family of the requirement under paragraph (3) and the residency requirements under paragraph (2)(B)(ii). The Corporation may grant any such waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(B) Other recapture provisions

The requirement under paragraph (3) shall not apply to any eligible single family property for which, upon resale by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, a portion of the sale proceeds or any subsidy provided in connection with the acquisition of the property by the household or family is required to be recaptured or repaid under any other Federal, State, or local law (including section 143(m) of title 26) or regulation or under any sale agreement.

(5) Exception to avoid displacement of existing residents

Notwithstanding the first sentence of paragraph (2), during the 180-day period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation may sell the property to the household residing in the property, but only if (A) such household was residing in the property at the time notice regarding the property was provided to clearinghouses under paragraph (1), (B) such sale is necessary to avoid the displacement of, and unnecessary hardship to, the resident household, (C) the resident household intends to occupy the property as a principal residence for at least 12 months, and (D) the resident household certifies in writing that the household intends to occupy the property for at least 12 months.

(d) Rules governing disposition of eligible multifamily housing properties

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to eligible multifamily housing properties for purposes of inspection.

(2) Expression of serious interest

Qualifying multifamily purchasers may give written notice of serious interest in a property during a period ending 90 days after the time the Corporation provides notice under paragraph (1). The notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

(3) Notice of readiness for sale

Upon the expiration of the period referred to in paragraph (2) for a property, the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

(4) Offers by qualifying multifamily purchasers

A qualifying multifamily purchaser receiving notice in accordance with paragraph (3) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase the property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation. If, before the expiration of such 45-day period, any offer to purchase a property initially accepted by the Corporation is subsequently rejected or fails (for any reason), the Corporation shall accept another offer to purchase the property made during such period that complies with the terms and conditions established by the Corporation (if such another offer is made). The preceding sentence may not be construed to require a qualifying multifamily purchaser whose offer is accepted during the 45-day period to purchase the property before the expiration of the period.

(5) Extension of restricted offer periods

The Corporation may provide notice to clearinghouses regarding, and offer for sale under the provisions of paragraphs (1) through (4), any eligible multifamily housing property—

(A) in which no qualifying multifamily purchaser has expressed serious interest during the period referred to in paragraph (2), or

(B) for which no qualifying multifamily purchaser has made a bona fide offer before the expiration of the period referred to in paragraph (4),

except that the Corporation may, in the discretion of the Corporation, alter the duration of the periods referred to in paragraphs (2) and (4) in offering any property for sale under this paragraph.

(6) Sale of multifamily properties to other purchasers

(A) Timing

If, upon the expiration of the period referred to in paragraph (2), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(B) Limitation on combination sales

The Corporation may not sell in combination with other properties any property for which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

(C) Expiration of offer period

If, upon the expiration of the period referred to in paragraph (4), no qualifying multifamily purchaser has made an offer to purchase a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(7) Low-income occupancy requirements

(A) Single property purchases

With respect to any purchase of a single eligible multifamily housing property by a qualifying multifamily purchaser under paragraph (4) or (5)—

(i) not less than 35 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the property in which the units are located; provided that

(ii) not less than 20 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the property in which the units are located.

(B) Aggregation requirements for multiproperty purchases

With respect to any purchase under paragraph (4) or (5) by a qualifying multifamily purchaser involving more than one eligible multifamily housing property as a part of the same negotiation, with respect to which the purchaser intends to aggregate the low-income occupancy required under this paragraph over the total number of units so purchased—

(i) not less than 40 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the building or structure in which the units are located; provided that

(ii) not less than 20 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the building or structure in which the units are located; and further provided that

(iii) not less than 10 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the property in which the units are located.

The requirements of this paragraph shall be contained in the deed or other recorded instrument.

(8) Exemptions

(A) Continued occupancy of current residents

No purchaser of an eligible multifamily property may terminate the occupancy of any person residing in the property on the date of purchase for purposes of meeting the low-income occupancy requirement applicable to the property under paragraph (7). The purchaser shall be considered to be in compliance with this subsection if each newly vacant dwelling unit is reserved for low-income occupancy until the low-income occupancy requirement is met.

(B) Financial infeasibility

The Secretary or the State housing finance agency for the State in which an eligi-

ble multifamily housing property is located may temporarily reduce the low-income occupancy requirements under paragraph (7) applicable to the property, if the Secretary or such agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return low-income occupancy to the level required under paragraph (7), and the Secretary or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

(e) Rent limitations

(1) In general

With respect to properties under paragraph (2), rents charged to tenants for units made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(2) Applicability

The rent limitations under this subsection shall apply to any eligible single family property sold pursuant to subsection (c)(2)(B)(i) of this section and to any eligible multifamily housing property sold pursuant to subsection (d) of this section.

(f) Preferences for sales

(1) In general

In selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income and low-income families and would retain such affordability for the longest term.

(2) Multiproperty purchases

The Corporation shall give preference, among substantially similar offers made under paragraph (4) or (5) of subsection (d) of this section to purchase more than one eligible multifamily housing property as a part of the same negotiation, to offers made by purchasers who agree to maintain low-income occupancy in each separate property purchased in compliance with the levels required for properties under subsection (d)(7)(A) of this section.

(3) Definition of substantially similar offers

For purposes of this subsection, a given offer to purchase eligible multifamily housing property or combinations of such properties shall be considered to be substantially similar to another offer if the purchase price under such given offer is not less than 85 percent of the purchase price under the other offer.

(g) Financing sales

(1) Assistance by Corporation

(A) Sale price

The Corporation shall establish a market value for each eligible multifamily housing property. The Corporation shall sell eligible multifamily housing property at the net realizable market value, except that the Corporation may agree to sell eligible multifamily housing property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to such property under subsection (d)(7) of this section. The Corporation may sell eligible single family property or eligible condominium property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum sale price.

(B) Purchase loan

The Corporation may provide a loan at market interest rates to any purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide the loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (i) a low-income family to purchase an eligible single family property under subsection (c) of this section, or (ii) a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to the purchase of an eligible residential property under subsection (c) or (d) of this section. The Corporation shall provide loans under this subparagraph in a form permitting sale or transfer of the loan to a subsequent holder. In providing financing for combinations of eligible multifamily housing properties under this section, the Corporation may hold a participating share, including a subordinate participation. The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms ''women-owned business'' and ''minority-owned business''

have the meanings given such terms in section 1441a(r) of this title, and the term ''minority'' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) Assistance by HUD

The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], title IV of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11361 et seq.], and the National Housing Act [12 U.S.C. 1701 et seq.], to enable any organization or individual to purchase eligible residential property.

(3) Assistance by FMHA

The Secretary of Agriculture shall take such action as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.] to enable any organization or individual to purchase eligible residential property.

(4) Exception to disposition rules

Notwithstanding the requirements under paragraphs (1), (2), (3), (4), (6), and (8) of subsection (d) of this section, the Corporation may provide for the disposition of eligible multifamily housing properties as necessary to facilitate purchase of such properties for use in connection with section 202 of the Housing Act of 1959 [12 U.S.C. 1701q].

(5) Bulk acquisitions under Home Investment Partnerships Act

(A) Purchase price

In providing for bulk acquisition of eligible single family properties by participating jurisdictions for inclusion in affordable housing activities under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], the Corporation shall agree to an amount to be paid for acquisition of such properties. The acquisition price shall include discounts for bulk purchase and for holding of the property such that the acquisition price for each property shall not exceed the fair market value of the property, as valued individually.

(B) Exemptions

To the extent necessary to facilitate sale of properties under this paragraph, the requirements of subsections (c) and (f) of this section and of paragraph (1) of this subsection shall not apply to such transactions and properties involved in such transactions.

(C) Inventories

To facilitate acquisitions by such participating jurisdictions, the Corporation shall provide the participating jurisdictions with inventories of eligible single family properties not less than 4 times each year.

(h) Coordination with other programs

(1) Use of secondary market agencies

In the disposition of eligible residential properties, the Corporation (in consultation with the Secretary) shall explore opportunities to work with secondary market entities to provide housing for low- and moderate-income families.

(2) Credit enhancement

(A) In general

With respect to such properties, the Secretary may, consistent with statutory authorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk-sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of property ownership, rental, and cooperative housing opportunities for low- and moderate-income families.

(B) Certain tax-exempt bonds

The Corporation may provide credit enhancements with respect to tax-exempt bonds issued on behalf of nonprofit organizations pursuant to section 103, and subpart A of part IV of subchapter A of chapter 1, of title 26, with respect to the disposition of eligible residential properties for the purposes described in subparagraph (A).

(3) National Affordable Housing Act

The Corporation shall coordinate the disposition of eligible residential property under this section with appropriate programs and provisions of, and amendments made by, the Cranston-Gonzalez National Affordable Housing Act, including titles II [42 U.S.C. 12721 et seq.] and IV of such Act.

(i) Exemption for certain transactions with insured depository institutions

The provisions of this section shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 1813 of this title), including any sale in connection with a transfer of all or substantially all of the assets of a closed insured depository institution (including such property) to another insured depository institution.

(j) Transfer of certain eligible residential properties to State housing agencies for disposition

Notwithstanding subsections (c), (d), (f), and (g) of this section, the Corporation may transfer eligible residential properties to the State housing finance agency or any other State housing agency for the State in which the property is located, or to any local housing agency in whose jurisdiction the property is located. Transfers of eligible residential properties under this subsection may be conducted by direct sale, consignment sale, or any other method the Corporation considers appropriate and shall be subject to the following requirements:

(1) Individual or bulk transfer

The Corporation may transfer such properties individually or in bulk, as agreed to by the Corporation and the State housing finance agency or State or local housing agency.

(2) Acquisition price

The acquisition price paid by the State housing finance agency or State or local housing agency to the Corporation for properties transferred under this subsection shall be an amount agreed to by the Corporation and the transferee agency.

(3) Low-income use

Any State housing finance agency or State or local housing agency acquiring properties under this subsection shall offer to sell or transfer the properties only as follows:

(A) Eligible single family properties

For eligible single family properties—

(i) to purchasers described under subparagraphs (A) and (B) of subsection (c)(2) of this section;

(ii) if the purchaser is a purchaser described under subsection (c)(2)(B)(i) of this section, subject to the rent limitations under subsection (e)(1) of this section;

(iii) subject to the requirement in the second sentence of subsection (c)(2) of this section; and

(iv) subject to recapture by the Corporation of excess proceeds from resale of the properties under paragraphs (3) and (4) of subsection (c) of this section.

(B) Eligible multifamily housing properties

For eligible multifamily housing properties—

(i) to qualifying multifamily purchasers;

(ii) subject to the low-income occupancy requirements under subsection (d)(7) of this section;

(iii) subject to the provisions of subsection (d)(8) of this section;

(iv) subject to a preference, among financially acceptable offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low- and low-income families and would retain such affordability for the longest term; and

(v) subject to the rent limitations under subsection (e)(1) of this section.

(4) Affordability

The State housing finance agency or State or local housing agency shall endeavor to make the properties transferred under this subsection more affordable to low-income families based upon the extent to which the acquisition price of a property under paragraph (2) is less than the market value of the property.

(k) Exception for sales to nonprofit organizations and public agencies

(1) Suspension of offer periods

With respect to any eligible residential property, the Corporation may (in the discretion of the Corporation) suspend any of the requirements of paragraphs (1) and (2) of subsection (c) of this section and paragraphs (1) through (4) of subsection (d) of this section, as applicable, but only to the extent that for the duration of the suspension the Corporation negotiates the sale of the property to a nonprofit organization or public agency. If the property is not sold pursuant to such negotiations, the requirements of any provisions suspended shall apply upon the termination of the suspension. Any time period referred to in such subsections shall toll for the duration of any suspension under this paragraph.

(2) Use restrictions

(A) Eligible single family property

Any eligible single family property sold under this subsection shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or made available for purchase by such families, (ii) subject to the rent limitations under subsection (e)(1) of this section, (iii) subject to the requirements relating to residency of a qualifying household under subsection (p)(12) of this section and to residency of a low-income family under subsection (c)(2)(B) of this section, and (iv) subject to recapture by the Corporation of excess proceeds from resale of the property under paragraphs (3) and (4) of subsection (c) of this section.

(B) Eligible multifamily housing property

Any eligible multifamily housing property sold under this subsection shall comply with the low-income occupancy requirements under subsection (d)(7) of this section and shall be subject to the rent limitations under subsection (e)(1) of this section.

***(l)* Rules governing disposition of eligible condominium property**

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to purchasers described in subparagraphs (A) through (D) of paragraph (2). The Corporation shall allow such purchasers reasonable access to an eligible condominium property for purposes of inspection.

(2) Offers to sell

For the 180-day period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation may offer to sell the property, at the discretion of the Corporation, to 1 or more of the following purchasers:

(A) Qualifying households.

(B) Nonprofit organizations.

(C) Public agencies.

(D) For-profit entities.

(3) Low-income occupancy requirements

(A) In general

Except as provided in subparagraph (B), any nonprofit organization, public agency, or for-profit entity that purchases an eligible condominium property shall (i) make the property available for occupancy by and maintain it as affordable for low-income families for the remaining useful life of the property, or (ii) make the property available

for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(B) Multiple-unit purchases

If any nonprofit organization, public agency, or for-profit entity purchases more than 1 eligible condominium property as a part of the same negotiation or purchase, the Corporation may (in the discretion of the Corporation) waive the requirement under subparagraph (A) and provide instead that not less than 35 percent of all eligible condominium properties purchased shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or (ii) made available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(C) Sale to other purchasers

If, upon the expiration of the 180-day period referred to in paragraph (2), no purchaser described in subparagraphs (A) through (D) of paragraph (2) has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any other purchaser.

(4) Recapture of profits from resale

Except as provided in paragraph (5), if any eligible condominium property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (3)(A)(ii) or (3)(B)(ii), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(5) Exception to recapture requirement

The Corporation (or its successor) may in its discretion waive the applicability to any qualifying household or low-income family of the requirement under paragraph (4) and the requirements relating to residency of a qualifying household or low-income family (under subsection (p)(12) of this section and paragraph (3) of this subsection, respectively). The Corporation may grant any such a waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(6) Limitations on multiple unit purchases

The Corporation may not sell or offer to sell as part of the same negotiation or purchase any eligible condominium properties that are not located in the same condominium project (as such term is defined in section 3603 of title 15). The preceding sentence may not be construed to require all eligible condominium properties offered or sold as part of the same negotiation or purchase to be located in the same structure.

(7) Rent limitations

Rents charged to tenants of eligible condominium properties made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants of eligible condominium properties made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(m) Liability provisions

(1) In general

The provisions of this section, or any failure by the Corporation to comply with such provisions, may not be used by any person to attack or defeat any title to property after it is conveyed by the Corporation.

(2) Low-income occupancy

The low-income occupancy requirements under subsections (c), (d), (j)(3), (k)(2), and (*l*)(3) of this section shall be judicially enforceable against purchasers of property under this section and their successors in interest by affected very low- and low-income families, State housing finance agencies, and any agency, corporation, or authority of the United States. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(3) Clearinghouses

A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this section.

(4) Corporation

The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver or conservator, or of any subsidiary corporation of a depository institution under receivership or conservatorship, or any claimant against such institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this section affects the amount of return from the assets.

(n) Unified affordable housing programs

(1) In general

Not later than 4 months after December 17, 1993, the Corporation shall enter into an agreement, as described in paragraph (3), with the Resolution Trust Corporation that sets out a plan for the orderly unification of the Corporation's activities, authorities, and responsibilities under this section with the authorities, activities, and responsibilities of the Resolution Trust Corporation pursuant to section 1441a(c) of this title in a manner that best achieves an effective and comprehensive affordable housing program management structure. The agreement shall be entered into after consultation with the Affordable Housing Advisory Board under section 14(b) of the Resolution Trust Corporation Completion Act.

(2) Authority and implementation

The Corporation shall have the authority to carry out the provisions of the agreement entered into pursuant to paragraph (1) and shall implement such agreement as soon as practicable but in no event later than 8 months after December 17, 1993.

(3) Terms of agreement

The agreement required under paragraph (1) shall provide a plan for—

(A) a program unifying all activities and responsibilities of the Corporation and the Resolution Trust Corporation, and the design of the unified program shall take into consideration the substantial experience of the Resolution Trust Corporation regarding—

(i) seller financing;

(ii) technical assistance;

(iii) marketing skills and relationships with public and nonprofit entities; and

(iv) staff resources;

(B) the elimination of duplicative and unnecessary administrative costs and resources;

(C) the management structure of the unified program;

(D) a timetable for the unification; and

(E) a methodology to determine the extent to which the provisions of this section shall be effective, in accordance with the limitations under subsection (b)(2) of this section.

(4) Transfer to FDIC

Beginning not later than October 1, 1995, the Corporation shall carry out any remaining authority and responsibilities of the Resolution Trust Corporation, as set forth in section 1441a(c) of this title.

(*o*) Report

To the extent applicable, in the annual report submitted by the Secretary to the Congress under section 3536 of title 42, the Secretary shall include a detailed description of any activities under this section, including recommendations for any additional authority the Secretary considers necessary to implement the provisions of this section.

(p) Definitions

For purposes of this section:

(1) Adjusted income and income

The terms ''adjusted income'' and ''income'' shall have the meaning given such terms in section 3(b) of the United States Housing Act of 1937 [42 U.S.C. 1437a(b)].

(2) Clearinghouse

The term ''clearinghouse'' means—

(A) the State housing finance agency for the State in which an eligible residential property or eligible condominium property is located;

(B) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board; and

(C) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968 [42 U.S.C. 3931 et seq.]) that the Corporation determines has the capacity to act as a clearinghouse for information.

(3) Corporation

The term ''Corporation'' means the Federal Deposit Insurance Corporation acting in its corporate capacity or its capacity as receiver.

(4) Eligible condominium property

The term ''eligible condominium property'' means a condominium unit, as such term is defined in section 3603 of title 15—

(A) to which such Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)] except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,000 in the case of a 4-family residence.

(5) Eligible multifamily housing property

The term ''eligible multifamily housing property'' means a property consisting of more than 4 dwelling units—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the applicable dollar amount specified in section 221(d)(3)(ii) of the National Housing Act [12 U.S.C. 1715*l*(d)(3)(ii)] for elevator-type structures, as such dollar amount is increased under such section for geographical areas or on a project-by-project basis (except that any such increase on a project-by-project basis shall be made pursuant to a determination by the Corporation that such increase is necessary).

(6) Eligible residential property

The term ''eligible residential property'' includes eligible single family properties and eligible multifamily housing properties.

(7) Eligible single family property

The term ''eligible single family property'' means a 1- to 4-family residence (including a manufactured home)—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act [12 U.S.C. 1709(b)(2)(A)] except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,000 in the case of a 4-family residence.

(8) Low-income families

The term ''low-income families'' means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(9) Net realizable market value

The term ''net realizable market value'' means a price below the market value that takes into account (A) any reductions in holding costs resulting from the expedited sale of a property, including foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (B) the avoidance, if applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

(10) Nonprofit organization

The term ''nonprofit organization'' means a private organization (including a limited equity cooperative)—

(A) no part of the earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

(B) that is approved by the Corporation as to financial responsibility.

(11) Public agency

The term ''public agency'' means any Federal, State, local, or other governmental entity, and includes any public housing agency.

(12) Qualifying household

The term ''qualifying household'' means a household—

(A) who intends to occupy eligible single family property as a principal residence;

(B) who agrees to occupy the property as a principal residence for at least 12 months;

(C) who certifies in writing that the household intends to occupy the property as a principal residence for at least 12 months; and

(D) whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(13) Qualifying multifamily purchaser

The term ''qualifying multifamily purchaser'' means—

(A) a public agency;

(B) a nonprofit organization; or

(C) a for-profit entity, which makes a commitment (for itself or any related entity) to comply with the low-income occupancy requirements under subsection (d)(7) of this section for any eligible multifamily housing property for which an offer to purchase is made during or after the periods specified under subsection (d) of this section.

(14) Secretary

The term ''Secretary'' means the Secretary of Housing and Urban Development.

(15) State housing finance agency

The term ''State housing finance agency'' means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout the State.

(16) Very low-income families

The term ''very low-income families'' means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(q) Notice to clearinghouses regarding ineligible properties

(1) In general

Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall, to the extent practicable, provide written notice to clearinghouses.

(2) Content

For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under subsection (c)(1) of this section contains with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under subsection (d)(1) of this section contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under subsection (*l*)(1) of this section contains with respect to eligible condominium properties.

(3) Availability

The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

(4) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Ineligible condominium property

The term ''ineligible condominium property'' means any eligible condominium property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A) of this section.

(B) Ineligible multifamily housing property

The term ''ineligible multifamily housing property'' means any eligible multifamily housing property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A) of this section.

(C) Ineligible single family property

The term ''ineligible single family property'' means any eligible single family property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A) of this section.

(D) Ineligible residential property

The term ''ineligible residential property'' includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.

(Sept. 21, 1950, ch. 967, § 2[40], as added Pub. L. 102–242, title II, § 241(a), Dec. 19, 1991, 105 Stat. 2317; amended Pub. L. 102–389, title II, Oct. 6, 1992, 106 Stat. 1592, 1593; Pub. L. 102–550, title V, § 503(c)(4), Oct. 28, 1992, 106 Stat. 3780; Pub. L. 103–204, §§ 13, 14(a)(2), (d)(2), (e)(2), (f)(2), Dec. 17, 1993, 107 Stat. 2391, 2393, 2396, 2398; Pub. L. 103–325, title VI, § 602(a)(65), (66), Sept. 23, 1994, 108 Stat. 2291; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675.)

REFERENCES IN TEXT

Section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (g)(1)(B), is section 1204(c)(3) of Pub. L. 101–73, which is set out as a note under section 1811 of this title.

The United States Housing Act of 1937, referred to in subsec. (g)(2), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (g)(2), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Title IV of the Act is classified principally to subchapter IV (§ 11361 et seq.) of chapter 119 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The National Housing Act, referred to in subsec. (g)(2), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

The Housing Act of 1949, referred to in subsec. (g)(3), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsecs. (g)(5)(A) and (h)(3), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, also known as the ''HOME Investment Partnerships Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42. Title IV of the Act, also known as the ''Homeownership and Opportunity Through HOPE Act'', enacted subchapter II–A (§ 1437aaa et seq.) of chapter 8 of Title 42 and subchapter IV (§ 12871 et seq.) of chapter 130 of Title 42, amended sections 1437c, 1437f, 1437*l*, 1437p, 1437r, and 1437s of Title 42 and section 1709 of this title, and enacted provisions set out as notes under sections 1437c, 1437aa, and 1437aaa of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

Section 14(b) of the Resolution Trust Corporation Completion Act, referred to in subsec. (n)(1), is section 14(b) of Pub. L. 103–204, which is set out below.

The Housing and Community Development Act of 1968, referred to in subsec. (p)(2)(C), probably means the Housing and Urban Development Act of 1968, Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476, as amended. Title IX of the Act is classified principally to chapter 49 (§ 3931 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title of 1968 Amendments note set out under section 1701 of this title and Tables.

CODIFICATION

Another section 2[40] of act Sept. 21, 1950, was renumbered section 2[43] and is classified to section 1831t of this title.

AMENDMENTS

2000—Subsec. (g)(2). Pub. L. 106–400 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1994—Subsec. (c)(4)(A). Pub. L. 103–325, § 602(a)(65), substituted ''subparagraphs (B) and (C) of subsection (p)(12) of this section'' for ''subsections (p)(12)(B) and (C) of this section''.

Subsec. (d)(8)(A). Pub. L. 103–325, § 602(a)(66), substituted ''meeting the'' for ''meeting''.

1993—Subsec. (g)(1)(B). Pub. L. 103–204, § 14(d)(2), inserted at end ''The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms 'women-owned business' and 'minority-owned business' have the meanings given such terms in section 1441a(r) of this title, and the term 'minority' has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.''

Subsec. (m)(4). Pub. L. 103–204, § 14(f)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver, or any claimant against such an institution, because the disposition of assets of the institution under this section affects the amount of return from the assets.''

Subsec. (n). Pub. L. 103–204, § 14(e)(2), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: ''AFFORDABLE HOUSING PROGRAM OFFICE.—The Corporation shall establish an Affordable Housing Program Office within the Corporation to carry out the provisions of this section and shall dedicate certain staff of the Corporation to the office.''

Subsec. (p)(4)(A), (5)(A), (7)(A). Pub. L. 103–204, § 13, inserted ''in its corporate capacity, its capacity as con-

servator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property)'' before ''; and''.

Subsec. (q). Pub. L. 103–204, § 14(a)(2), added subsec. (q).

1992—Subsec. (p)(4)(B). Pub. L. 102–550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).''

Pub. L. 102–389 added subpar. (B) and struck out former subpar. (B) which read as follows: ''that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).''

Subsec. (p)(5)(B). Pub. L. 102–389 added subpar. (B) and struck out former subpar. (B) which read as follows: ''that has an appraised value that does not exceed the applicable dollar amount set forth in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).''

Subsec. (p)(7)(B). Pub. L. 102–550 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''that has an appraised value that does not exceed the applicable dollar amount specified in the first sentence of section 203(b)(2) of the National Housing Act, as such dollar amount is increased on an area-by-area basis under such section for areas with high prevailing housing sales prices, except that for purposes of this paragraph no such increase may exceed 150 percent of the dollar amount specified in section 203(b)(2).''

Pub. L. 102–389 added subpar. (B) and struck out former subpar. (B) which read as follows: ''that has an appraised value that does not exceed the applicable dollar amount set forth in the first sentence of section 203(b)(2) of the National Housing Act (which may, in the discretion of the Corporation, take into consideration any increase of such amount for high-cost areas).''

AFFORDABLE HOUSING ADVISORY BOARD

Section 14(b) of Pub. L. 103–204, as amended by Pub. L. 105–216, § 14(e), (f), July 29, 1998, 112 Stat. 910, provided that:

''(1) ESTABLISHMENT.—There is hereby established the Affordable Housing Advisory Board (in this subsection referred to as the 'Advisory Board') to advise the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation on policies and programs related to the provision of affordable housing, including the operation of the affordable programs.

''(2) MEMBERSHIP.—The Advisory Board shall consist of—

''(A) the Secretary of Housing and Urban Development;

''(B) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation (or the Chairperson's delegate), who shall be a nonvoting member;

''(C) 4 persons appointed by the Secretary of Housing and Urban Development not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 17, 1993], who represent the interests of individuals and organizations involved in using the affordable housing programs (including nonprofit organizations, public agencies, and for-profit organizations that purchase properties under the affordable housing programs, organizations that provide technical assistance regarding the affordable housing programs, and organizations that represent the interest of low- and moderate-income families); and

''(D) 2 persons who are members of the National Housing Advisory Board pursuant to section 21A(d)(2)(B)(ii) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(d)(2)(B)(ii)] (as in effect before the effective date of the repeal under subsection (c)(2) [90 days after Dec. 17, 1993]), who shall be appointed by such Board before such effective date.

''(3) TERMS.—Each member shall be appointed for a term of 4 years, except as provided in paragraphs (4) and (5).

''(4) TERMS OF INITIAL APPOINTEES.—

''(A) PERMANENT POSITIONS.—As designated by the Secretary of Housing and Urban Development at the time of appointment, of the members first appointed under paragraph (2)(D)—

''(i) 1 shall be appointed for a term of 1 year;

''(ii) 1 shall be appointed for a term of 2 years;

''(iii) 1 shall be appointed for a term of 3 years; and

''(iv) 1 shall be appointed for a term of 4 years.

''(B) INTERIM MEMBERS.—The members of the Advisory Board under paragraph (2)(E) shall be appointed for a single term of 4 years, which shall begin upon the earlier of (i) the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 17, 1993], or (ii) the first meeting of the Advisory Board.

''(5) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

''(6) MEETINGS.—

''(A) TIMING.—The Advisory Board shall meet 2 times a year or at the request of the Board of Directors of the Federal Deposit Insurance Corporation. The first meeting of the Advisory Board shall take place not later than the expiration of the 90-day period beginning on the date of the enactment of this Act [Dec. 17, 1993].

''(B) ADVICE.—The Advisory Board shall submit information and advice resulting from each meeting, in such form as the Board considers appropriate, to the Thrift Depositor Protection Oversight Board and the Board of Directors of the Federal Deposit Insurance Corporation.

''(7) ANNUAL REPORTS.—For each year, the Advisory Board shall submit a report containing its findings and recommendations to the Committee on Banking, Housing, and Urban affairs [sic] of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The first such report shall be made not later than the expiration of the 6-month period beginning on the date of the enactment of this Act [Dec. 17, 1993].

''(8) DEFINITION.—For purposes of this subsection, the term 'affordable housing programs' means the program under section 21A(c) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(c)] and the program under section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831q].

''(9) SUNSET.—The Advisory Board established under this subsection shall terminate on September 30, 1998.''

[Pub. L. 105–216, § 14(e), July 29, 1998, 112 Stat. 910, provided that the amendment made by section 14(e) to sec-

tion 14(b)(2) of Pub. L. 103–204, set out above, is effective July 29, 1998.]

COORDINATION AND CONSULTATION BETWEEN FEDERAL DEPOSIT INSURANCE CORPORATION AND RESOLUTION TRUST CORPORATION UNDER AFFORDABLE HOUSING PROGRAMS

Section 241(b) of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, § 1604(c)(1), Oct. 28, 1992, 106 Stat. 4083, provided that: ''The Federal Deposit Insurance Corporation and the Resolution Trust Corporation shall consult and coordinate with each other in carrying out their respective responsibilities under the affordable housing programs under section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831q] and section 21A(c) of the Federal Home Loan Bank Act [12 U.S.C. 1441a(c)]. Such corporations shall develop any procedures, and may enter into any agreements, necessary to provide for the coordinated, efficient, and effective operation of such programs.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1441a, 1821 of this title; title 15 section 2227.

§ 1831r. Payments on foreign deposits prohibited

(a) In general

Notwithstanding any other provision of law, the Corporation, the Board of Governors of the Federal Reserve System, the Resolution Trust Corporation, any other agency, department, and instrumentality of the United States, and any corporation owned or controlled by the United States may not, directly or indirectly, make any payment or provide any assistance, guarantee, or transfer under this chapter or any other provision of law in connection with any insured depository institution which would have the direct or indirect effect of satisfying, in whole or in part, any claim against the institution for obligations of the institution which would constitute deposits as defined in section 1813(*l*) of this title but for subparagraphs (A) and (B) of section 1813(*l*)(5) of this title.

(b) Exception

Subsection (a) of this section shall not apply to any payment, assistance, guarantee, or transfer made or provided by the Corporation if the Board of Directors determines in writing that such action is not inconsistent with any requirement of section 1823(c) of this title.

(c) Discount window lending

No provision of this section shall be construed as prohibiting any Federal Reserve bank from making advances or otherwise extending credit pursuant to the Federal Reserve Act [12 U.S.C. 221 et seq.] to any insured depository institution to the extent that such advance or extension of credit is consistent with the conditions and limitations imposed under section 10B of such Act [12 U.S.C. 347b].

(Sept. 21, 1950, ch. 967, § 2[41], as added Pub. L. 102–242, title III, § 312, Dec. 19, 1991, 105 Stat. 2367.)

REFERENCES IN TEXT

The Federal Reserve Act, referred to in subsec. (c), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified principally to chapter 3 (§ 221 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 226 of this title and Tables.

§ 1831r–1. Notice of branch closure

(a) Notice to appropriate Federal banking agency

(1) In general

An insured depository institution which proposes to close any branch shall submit a notice of the proposed closing to the appropriate Federal banking agency not later than the first day of the 90-day period ending on the date proposed for the closing.

(2) Contents of notice

A notice under paragraph (1) shall include—

(A) a detailed statement of the reasons for the decision to close the branch; and

(B) statistical or other information in support of such reasons.

(b) Notice to customers

(1) In general

An insured depository institution which proposes to close a branch shall provide notice of the proposed closing to its customers.

(2) Contents of notice

Notice under paragraph (1) shall consist of—

(A) posting of a notice in a conspicuous manner on the premises of the branch proposed to be closed during not less than the 30-day period ending on the date proposed for that closing; and

(B) inclusion of a notice in—

(i) at least one of any regular account statements mailed to customers of the branch proposed to be closed, or

(ii) in a separate mailing,

by not later than the beginning of the 90-day period ending on the date proposed for that closing.

(c) Adoption of policies

Each insured depository institution shall adopt policies for closings of branches of the institution.

(d) Branch closures in interstate banking or branching operations

(1) Notice requirements

In the case of an interstate bank which proposes to close any branch in a low- or moderate-income area, the notice required under subsection (b)(2) of this section shall contain the mailing address of the appropriate Federal banking agency and a statement that comments on the proposed closing of such branch may be mailed to such agency.

(2) Action required by appropriate Federal banking agency

If, in the case of a branch referred to in paragraph (1)—

(A) a person from the area in which such branch is located—

(i) submits a written request relating to the closing of such branch to the appropriate Federal banking agency; and

(ii) includes a statement of specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the area affected by the closing of the branch; and

(B) the agency concludes that the request is not frivolous,

the agency shall consult with community leaders in the affected area and convene a meeting of representatives of the agency and other interested depository institution regulatory agencies with community leaders in the affected area and such other individuals, organizations, and depository institutions (as defined in section 461(b)(1)(A) of this title) as the agency may determine, in the discretion of the agency, to be appropriate, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area, including the establishment of a new branch by another depository institution, the chartering of a new depository institution, or the establishment of a community development credit union, following the closing of the branch.

(3) No effect on closing

No action by the appropriate Federal banking agency under paragraph (2) shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of subsections (a) and (b) of this section have been met by such bank with respect to the branch being closed.

(4) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Interstate bank defined

The term ''interstate bank'' means a bank which maintains branches in more than 1 State.

(B) Low- or moderate-income area

The term ''low- or moderate-income area'' means a census tract for which the median family income is—

(i) less than 80 percent of the median family income for the metropolitan statistical area (as designated by the Director of the Office of Management and Budget) in which the census tract is located; or

(ii) in the case of a census tract which is not located in a metropolitan statistical area, less than 80 percent of the median family income for the State in which the census tract is located, as determined without taking into account family income in metropolitan statistical areas in such State.

(e) Scope of application

This section shall not apply with respect to—

(1) an automated teller machine;

(2) the relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation—

(A) occurs within the immediate neighborhood; and

(B) does not substantially affect the nature of the business or customers served; or

(3) a branch that is closed in connection with—

(A) an emergency acquisition under—

(i) section 1821(n) of this title; or

(ii) subsection (f) or (k) of section 1823 of this title; or

(B) any assistance provided by the Corporation under section 1823(c) of this title.

(Sept. 21, 1950, ch. 967, § 2[42], formerly § 2[39], as added Pub. L. 102–242, title II, § 228, Dec. 19, 1991, 105 Stat. 2308; renumbered § 2[42], Pub. L. 102–550, title XVI, § 1602(a), Oct. 28, 1992, 106 Stat. 4078; amended Pub. L. 103–328, title I, § 106, Sept. 29, 1994, 108 Stat. 2357; Pub. L. 104–208, div. A, title II, § 2213, Sept. 30, 1996, 110 Stat. 3009–411.)

CODIFICATION

Section was classified to section 1831p of this title prior to renumbering by Pub. L. 102–550.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–208 added subsec. (e).
1994—Subsec. (d). Pub. L. 103–328 added subsec. (d).

§ 1831s. Transferred

CODIFICATION

Section, act Sept. 21, 1950, ch. 967, § 2[39], as added Dec. 19, 1991, Pub. L. 102–242, title I, § 132(a), 105 Stat. 2267, as amended, which related to standards for safety and soundness, was transferred to section 1831p–1 of this title.

§ 1831t. Depository institutions lacking Federal deposit insurance

(a) Annual independent audit of private deposit insurers

(1) Audit required

Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) Providing copies of audit report

(A) Private deposit insurer

The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

(B) Depository institution

Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(b) Disclosure required

Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) Periodic statements; account records

Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the

Federal Government does not guarantee that depositors will get back their money.

(2) Advertising; premises

Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.

(3) Acknowledgement of disclosure

(A) New depositors

With respect to any depositor who was not a depositor at the depository institution before June 19, 1994, receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) Current depositors

Receive any deposit after the effective date of this paragraph for the account of any depositor who was a depositor before June 19, 1994, only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (C) which are applicable as of the date of the deposit.

(C) Alternative provision of notice to current depositors

(i) In general

Transmit to each depositor who was a depositor before June 19, 1994, and has not signed a written acknowledgement described in subparagraph (A)—

(I) a card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) Manner and timing of notice

(I) First notice

Make the transmission described in clause (i) via first class mail not later than September 12, 1994.

(II) Second notice

Make a second transmission described in clause (i) via first class mail not less than 30 days and not more than 45 days after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(III) Third notice

Make a third transmission described in clause (i) via first class mail not less than 30 days and not more than 45 days after a transmission to the depositor in accordance with subclause (II), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) Manner and content of disclosure

To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section.

(d) Exceptions for institutions not receiving retail deposits

The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) of this section for any depository institution that, within the United States, does not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

(e) Eligibility for Federal deposit insurance

(1) In general

Except as permitted by the Federal Trade Commission, in consultation with the Federal Deposit Insurance Corporation, no depository institution (other than a bank, including an unincorporated bank) lacking Federal deposit insurance may use the mails or any instrumentality of interstate commerce to receive or facilitate receiving deposits, unless the appropriate supervisor of the State in which the institution is chartered has determined that the institution meets all eligibility requirements for Federal deposit insurance, including—

(A) in the case of an institution described in section 461(b)(1)(A)(iv) of this title, all eligibility requirements set forth in the Federal Credit Union Act [12 U.S.C. 1751 et seq.] and regulations of the National Credit Union Administration; and

(B) in the case of any other institution, all eligibility requirements set forth in this chapter and regulations of the Corporation.

(2) Authority of FDIC and NCUA not affected

No determination under paragraph (1) shall bind, or otherwise affect the authority of, the National Credit Union Administration or the Corporation.

(f) Definitions

For purposes of this section:

(1) Appropriate supervisor

The ''appropriate supervisor'' of a depository institution means the agency primarily responsible for supervising the institution.

(2) Depository institution

The term ''depository institution'' includes—

(A) any entity described in section 461(b)(1)(A)(iv) of this title; and

(B) any entity that, as determined by the Federal Trade Commission—

(i) is engaged in the business of receiving deposits; and

(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

(3) Lacking Federal deposit insurance

A depository institution lacks Federal deposit insurance if the institution is not either—

(A) an insured depository institution; or

(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752].

(4) Private deposit insurer

The term ''private deposit insurer'' means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

(g) Enforcement

Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission.

(Sept. 21, 1950, ch. 967, § 2[43], formerly § 2[40], as added Pub. L. 102–242, title I, § 151(a)(1), Dec. 19, 1991, 105 Stat. 2282; renumbered § 2[43], Pub. L. 102–550, title XVI § 1602(b), Oct. 28, 1992, 106 Stat. 4078; amended Pub. L. 103–325, title III, § 340(a), Sept. 23, 1994, 108 Stat. 2237.)

REFERENCES IN TEXT

For the effective date of this paragraph, referred to in subsec. (b)(3)(B), see Effective Date of 1994 Amendment note below.

The Federal Credit Union Act, referred to in subsec. (e)(1)(A), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see section 1751 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (g), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–325 amended heading and text of subsec. (b)(3) generally. Prior to amendment, text read as follows: ''Receive deposits only for the account of persons who have signed a written acknowledgment that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that they will get back their money.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 340(b) of Pub. L. 103–325 provided that: ''Section 43(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(b)(3)], as amended by subsection (a), shall take effect in accordance with section 151(a)(2)(D) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [see Effective Date note below].''

EFFECTIVE DATE

Section 151(a)(2) of Pub. L. 102–242 provided that: ''Section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831t] (as added by paragraph (1)) shall become effective on the date of enactment of this Act [Dec. 19, 1991], except that—

''(A) paragraphs (1) and (2) of subsection (b) shall become effective 1 year after the date of enactment of this Act;

''(B) during the period beginning 1 year after that date of enactment of this Act and ending 30 months after that date of enactment, subsection (b)(1) shall apply with ', and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money' omitted;

''(C) subsection (e) shall become effective 2 years after that date of enactment; and

''(D) subsection (b)(3) shall become effective 30 months after that date of enactment.''

VIABILITY OF PRIVATE DEPOSIT INSURERS

Section 151(b) of Pub. L. 102–242, as amended by Pub. L. 102–550, title XVI, § 1603(f)(1), Oct. 28, 1992, 106 Stat. 4081, provided that:

''(1) DEADLINE FOR INITIAL INDEPENDENT AUDIT.—The initial annual audit under section 43(a)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(a)(1)] (as added by subsection (a)) shall be completed not later than 120 days after the date of enactment of this Act [Dec. 19, 1991].

''(2) BUSINESS PLAN REQUIRED.—Not later than 240 days after the date of enactment of this Act [Dec. 19, 1991], any private deposit insurer shall provide a business plan to each appropriate supervisor of each State in which deposits are received by any depository institution lacking Federal deposit insurance the deposits of which are insured by a private deposit insurer. The business plan shall explain in detail why the private deposit insurer is viable, and shall, at a minimum—

''(A) describe the insurer's—

''(i) underwriting standards;

''(ii) resources, including trends in and forecasts of assets, income, and expenses;

''(iii) risk-management program, including examination and supervision, problem case resolution, and remedies; and

''(B) include, for the preceding 5 years, copies of annual audits, annual reports, and annual meeting agendas and minutes.

''(3) DEFINITIONS.—For purposes of this subsection, the terms 'appropriate supervisor', 'depository institution', 'lacking Federal deposit insurance', and 'private deposit insurer' have the same meaning as in section 43(f) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(f)] (as added by subsection (a)).''

§ 1831u. Interstate bank mergers

(a) Approval of interstate merger transactions authorized

(1) In general

Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 1828(c) of this title between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

(2) State election to prohibit interstate merger transactions

(A) In general

Notwithstanding paragraph (1), a merger transaction may not be approved pursuant to paragraph (1) if the transaction involves a bank the home State of which has enacted a law after September 29, 1994, and before June 1, 1997, that—

(i) applies equally to all out-of-State banks; and

(ii) expressly prohibits merger transactions involving out-of-State banks.

(B) No effect on prior approvals of merger transactions

A law enacted by a State pursuant to subparagraph (A) shall have no effect on merger transactions that were approved before the effective date of such law.

(3) State election to permit early interstate merger transactions

(A) In general

A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that—

(i) applies equally to all out-of-State banks; and

(ii) expressly permits interstate merger transactions with all out-of-State banks.

(B) Certain conditions allowed

A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if—

(i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);

(ii) the imposition of the conditions is not preempted by Federal law; and

(iii) the conditions do not apply or require performance after May 31, 1997.

(4) Interstate merger transactions involving acquisitions of branches

(A) In general

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

(B) Treatment of branch for purposes of this section

In the case of an interstate merger transaction which involves the acquisition of a branch of an insured bank without the acquisition of the bank, the branch shall be treated, for purposes of this section, as an insured bank the home State of which is the State in which the branch is located.

(5) Preservation of State age laws

(A) In general

The responsible agency may not approve an application pursuant to paragraph (1) that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(B) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding subparagraph (A), the responsible agency may approve a merger transaction pursuant to paragraph (1) involving the acquisition of a bank that has been in existence at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(6) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank or branch shall be deemed to have been in existence for the same period of time as the bank or branch to be acquired.

(b) Provisions relating to application and approval process

(1) Compliance with State filing requirements

(A) In general

Any bank which files an application for an interstate merger transaction shall—

(i) comply with the filing requirements of any host State of the bank which will result from such transaction to the extent that the requirement—

(I) does not have the effect of discriminating against out-of-State banks or out-of-State bank holding companies or subsidiaries of such banks or bank holding companies; and

(II) is similar in effect to any requirement imposed by the host State on a nonbanking corporation incorporated in another State that engages in business in the host State; and

(ii) submit a copy of the application to the State bank supervisor of the host State.

(B) Penalty for failure to comply

The responsible agency may not approve an application for an interstate merger transaction if the applicant materially fails to comply with subparagraph (A).

(2) Concentration limits

(A) Nationwide concentration limits

The responsible agency may not approve an application for an interstate merger transaction if the resulting bank (including all insured depository institutions which are affiliates of the resulting bank), 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.

(B) Statewide concentration limits other than with respect to initial entries

The responsible agency may not approve an application for an interstate merger transaction if—

(i) any bank involved in the transaction (including all insured depository institutions which are affiliates of any such bank) has a branch in any State in which any other bank involved in the transaction has a branch; and

(ii) the resulting bank (including all insured depository institutions which would

be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) Effectiveness of State deposit caps

No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) Exceptions to subparagraph (B)

The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) of this section without regard to the applicability of subparagraph (B) with respect to any State if—

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the transaction is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) Exception for certain banks

This paragraph shall not apply with respect to any interstate merger transaction involving only affiliated banks.

(3) Community reinvestment compliance

In determining whether to approve an application for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction, the responsible agency shall—

(A) comply with the responsibilities of the agency regarding such application under section 2903 of this title;

(B) take into account the most recent written evaluation under section 2903 of this title of any bank which would be an affiliate of the resulting bank; and

(C) take into account the record of compliance of any applicant bank with applicable State community reinvestment laws.

(4) Adequacy of capital and management skills

The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) of this section only if—

(A) each bank involved in the transaction is adequately capitalized as of the date the application is filed; and

(B) the responsible agency determines that the resulting bank will continue to be adequately capitalized and adequately managed upon the consummation of the transaction.

(5) Surrender of charter after merger transaction

The charters of all banks involved in an interstate merger transaction, other than the charter of the resulting bank, shall be surrendered, upon request, to the Federal banking agency or State bank supervisor which issued the charter.

(c) Applicability of certain laws to interstate banking operations

(1) State taxation authority not affected

(A) In general

No provision of this section shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(B) Imposition of shares tax by host States

In the case of a branch of an out-of-State bank which results from an interstate merger transaction, a proportionate amount of the value of the shares of the out-of-State bank may be subject to any bank shares tax levied or imposed by the host State, or any political subdivision of such host State that imposes such tax based upon a method adopted by the host State, which may include allocation and apportionment.

(2) Applicability of antitrust laws

No provision of this section shall be construed as affecting—

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(3) Reservation of certain rights to States

No provision of this section shall be construed as limiting in any way the right of a State to—

(A) determine the authority of State banks chartered by that State to establish and maintain branches; or

(B) supervise, regulate, and examine State banks chartered by that State.

(4) State-imposed notice requirements

A host State may impose any notification or reporting requirement on a branch of an out-of-State bank if the requirement—

(A) does not discriminate against out-of-State banks or bank holding companies; and

(B) is not preempted by any Federal law regarding the same subject.

(d) Operations of the resulting bank

(1) Continued operations

A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

(2) Additional branches

Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

(3) Certain conditions and commitments continued

If, as a condition for the acquisition of a bank by an out-of-State bank holding company before September 29, 1994—

(A) the home State of the acquired bank imposed conditions on such acquisition by such out-of-State bank holding company; or

(B) the bank holding company made commitments to such State in connection with the acquisition,

the State may enforce such conditions and commitments with respect to such bank holding company or any affiliated successor company which controls a bank or branch in such State as a result of an interstate merger transaction to the same extent as the State could enforce such conditions or commitments against the bank holding company before the consummation of the merger transaction.

(e) Exception for banks in default or in danger of default

If an application under subsection (a)(1) of this section for approval of a merger transaction which involves 1 or more banks in default or in danger of default or with respect to which the Corporation provides assistance under section 1823(c) of this title, the responsible agency may approve such application without regard to subsection (b) of this section, or paragraph (2), (4), or (5) of subsection (a) of this section.

(f) Applicable rate and other charge limitations

(1) In general

In the case of any State that has a constitutional provision that sets a maximum lawful annual percentage rate of interest on any contract at not more than 5 percent above the discount rate for 90-day commercial paper in effect at the Federal reserve bank for the Federal reserve district in which such State is located, except as provided in paragraph (2), upon the establishment in such State of a branch of any out-of-State insured depository institution in such State under this section, the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved from time to time in any loan or discount made or upon any note, bill of exchange, financing transaction, or other evidence of debt by any insured depository institution whose home State is such State shall be equal to not more than the greater of—

(A) the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction under the constitution or any statute or other law of the home State of the out-of-State insured depository institution establishing any such branch, without reference to this section, as such maximum interest rate or amount of interest may change from time to time; or

(B) the maximum rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction by a State insured depository institution chartered under the laws of such State or a national bank or Federal savings association whose main office is located in such State without reference to this section.

(2) Rule of construction

No provision of this subsection shall be construed as superseding or affecting—

(A) the authority of any insured depository institution to take, receive, reserve, and charge interest on any loan made in any State other than the State referred to in paragraph (1); or

(B) the applicability of section 1735f–7a of this title, section 85 of this title, or section 1831d of this title.

(g) Definitions

For purposes of this section, the following definitions shall apply:

(1) Adequately capitalized

The term ''adequately capitalized'' has the same meaning as in section 1831*o* of this title.

(2) Antitrust laws

The term ''antitrust laws''—

(A) has the same meaning as in subsection (a) of section 12 of title 15; and

(B) includes section 45 of title 15 to the extent such section 45 relates to unfair methods of competition.

(3) Branch

The term ''branch'' means any domestic branch.

(4) Home State

The term ''home State''—

(A) means—

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

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

(B) with respect to a bank holding company, has the same meaning as in section 1841(*o*)(4) of this title.

(5) Host State

The term ''host State'' means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(6) Interstate merger transaction

The term ''interstate merger transaction'' means any merger transaction approved pursuant to subsection (a)(1) of this section.

(7) Merger transaction

The term ''merger transaction'' has the meaning determined under section 1828(c)(3) of this title.

(8) Out-of-State bank

The term ''out-of-State bank'' means, with respect to any State, a bank whose home State is another State.

(9) Out-of-State bank holding company

The term ''out-of-State bank holding company'' means, with respect to any State, a bank holding company whose home State is another State.

(10) Responsible agency

The term ''responsible agency'' means the agency determined in accordance with section 1828(c)(2) of this title with respect to a merger transaction.

(11) Resulting bank

The term ''resulting bank'' means a bank that has resulted from an interstate merger transaction under this section.

(Sept. 21, 1950, ch. 967, § 2[44], as added Pub. L. 103–328, title I, § 102(a), Sept. 29, 1994, 108 Stat. 2343; amended Pub. L. 106–102, title VII, § 731, Nov. 12, 1999, 113 Stat. 1477.)

AMENDMENTS

1999—Subsecs. (f), (g). Pub. L. 106–102 added subsec. (f) and redesignated former subsec. (f) as (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 215a–1, 1820, 1828, 1831a, 3103 of this title.

§ 1831v. Authority of State insurance regulator and Securities and Exchange Commission

(a) In general

Notwithstanding any other provision of law, the provisions of—

(1) section 1844(c) of this title that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on holding companies and their functionally regulated subsidiaries or that require deference to other regulators;

(2) section 1844(g) of this title that limit the authority of the Board to require a functionally regulated subsidiary of a holding company to provide capital or other funds or assets to a depository institution subsidiary of the holding company and to take certain actions including requiring divestiture of the depository institution; and

(3) section 1848a of this title that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to holding companies and their functionally regulated subsidiaries;

shall also limit whatever authority that a Federal banking agency might otherwise have under any statute or regulation to require reports, make examinations, impose capital requirements, or take any other direct or indirect action with respect to any functionally regulated affiliate of a depository institution, subject to the same standards and requirements as are applicable to the Board under those provisions.

(b) Certain exemption authorized

No provision of this section shall be construed as preventing the Corporation, if the Corporation finds it necessary to determine the condition of a depository institution for insurance purposes, from examining an affiliate of any depository institution, pursuant to section 1820(b)(4) of this title, as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) Functionally regulated subsidiary

The term ''functionally regulated subsidiary'' has the meaning given the term in section 1844(c)(5) of this title.

(2) Functionally regulated affiliate

The term ''functionally regulated affiliate'' means, with respect to any depository institution, any affiliate of such depository institution that is—

(A) not a depository institution holding company; and

(B) a company described in any clause of section 1844(c)(5)(B) of this title.

(Sept. 21, 1950, ch. 967, § 2[45], as added Pub. L. 106–102, title I, § 112(b), Nov. 12, 1999, 113 Stat. 1367.)

EFFECTIVE DATE

Section effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1828 of this title.

§ 1831w. Safety and soundness firewalls applicable to financial subsidiaries of banks

(a) In general

An insured State bank may control or hold an interest in a subsidiary that engages in activities as principal that would only be permissible for a national bank to conduct through a financial subsidiary if—

(1) the State bank and each insured depository institution affiliate of the State bank are well capitalized (after the capital deduction required by paragraph (2));

(2) the State bank complies with the capital deduction and financial statement disclosure requirements in section 24a(c) of this title;

(3) the State bank complies with the financial and operational safeguards required by section 24a(d) of this title; and

(4) the State bank complies with the amendments to sections 23A and 23B of the Federal Reserve Act [12 U.S.C. 371c and 371c–1] made by section 121(b) of the Gramm-Leach-Bliley Act.

(b) Preservation of existing subsidiaries

Notwithstanding subsection (a) of this section, an insured State bank may retain control of a subsidiary, or retain an interest in a subsidiary, that the State bank lawfully controlled or acquired before November 12, 1999, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) Subsidiary

The term ''subsidiary'' means any company that is a subsidiary (as defined in section 1813(w)(4) of this title) of 1 or more insured banks.

(2) Financial subsidiary

The term ''financial subsidiary'' has the meaning given the term in section 24a(g) of this title.

(d) Preservation of authority

(1) This chapter

No provision of this section shall be construed as superseding the authority of the Federal Deposit Insurance Corporation to review subsidiary activities under section 1831a of this title.

(2) Federal Reserve Act

No provision of this section shall be construed as affecting the applicability of the 20th undesignated paragraph of section 9 of the Federal Reserve Act [12 U.S.C. 335].

(Sept. 21, 1950, ch. 967, § 2[46], as added Pub. L. 106–102, title I, § 121(d)(1), Nov. 12, 1999, 113 Stat. 1380.)

REFERENCES IN TEXT

Section 121(b) of the Gramm-Leach-Bliley Act, referred to in subsec. (a)(4), is section 121(b) of Pub. L. 106–102, title I, Nov. 12, 1999, 113 Stat. 1378, which amended section 371c of this title.

EFFECTIVE DATE

Section effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1843 of this title.

§ 1831x. Insurance customer protections

(a) Regulations required

(1) In general

The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on November 12, 1999, customer protection regulations (which the agencies jointly determine to be appropriate) that—

(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) are consistent with the requirements of this chapter and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

(2) Applicability to subsidiaries

The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of a depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

(3) Consultation and joint regulations

The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

(b) Sales practices

The regulations prescribed pursuant to subsection (a) of this section shall include antitying and anticoercion rules applicable to the sale of insurance products that prohibit a depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 1972 of this title, is conditional upon—

(1) the purchase of an insurance product from the institution or any of its affiliates; or

(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(c) Disclosures and advertising

The regulations prescribed pursuant to subsection (a) of this section shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

(1) Disclosures

(A) In general

Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

(i) Uninsured status

As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the depository institution.

(ii) Investment risk

In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

(iii) Coercion

The approval of an extension of credit may not be conditioned on—

(I) the purchase of an insurance product from the institution in which the application for credit is pending or of any affiliate of the institution; or

(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(B) Making disclosure readily understandable

Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

(i) ''NOT FDIC—INSURED''.

(ii) ''NOT GUARANTEED BY THE BANK''.

(iii) ''MAY GO DOWN IN VALUE''.

(iv) ''NOT INSURED BY ANY GOVERNMENT AGENCY''.

(C) Limitation

Nothing in this paragraph requires the inclusion of the foregoing disclosures in advertisements of a general nature describing or listing the services or products offered by an institution.

(D) Meaningful disclosures

Disclosures shall not be considered to be meaningfully provided under this paragraph if the institution or its representative states that disclosures required by this subsection were available to the customer in printed material available for distribution, where such printed material is not provided and such information is not orally disclosed to the customer.

(E) Adjustments for alternative methods of purchase

In prescribing the requirements under subparagraphs (A) and (F), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

(F) Consumer acknowledgment

A requirement that a depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

(2) Prohibition on misrepresentations

A prohibition on any practice, or any advertising, at any office of, or on behalf of, the depository institution, or any subsidiary, as appropriate, that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution;

(B) in the case of a variable annuity or insurance product that involves an investment risk, the investment risk associated with any such product; or

(C) in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that—

(i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and

(ii) the customer is free to purchase the insurance product from another source.

(d) Separation of banking and nonbanking activities

(1) Regulations required

The regulations prescribed pursuant to subsection (a) of this section shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

(2) Requirements

Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) Separate setting

A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

(B) Referrals

Standards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(C) Qualification and licensing requirements

Standards prohibiting any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

(e) Domestic violence discrimination prohibition

(1) In general

In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of in-

surance claims, except as required or expressly permitted under State law.

(2) Scope of application

The prohibition contained in paragraph (1) shall apply to any life or health insurance product which is sold or offered for sale, as principal, agent, or broker, by any depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

(3) Domestic violence defined

For purposes of this subsection, the term ''domestic violence'' means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

(C) Subjecting another person to false imprisonment.

(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

(f) Consumer grievance process

The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

(1) establish a group within each regulatory agency to receive such complaints;

(2) develop procedures for investigating such complaints;

(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

(g) Effect on other authority

(1) In general

No provision of this section shall be construed as granting, limiting, or otherwise affecting—

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

(B) except as provided in paragraph (2), any authority of any State insurance commission (or any agency or office performing like functions), or of any State securities commission (or any agency or office performing like functions), or other State authority under any State law.

(2) Coordination with State law

(A) In general

Except as provided in subparagraph (B), insurance customer protection regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

(B) Preemption

(i) In general

If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

(ii) Considerations

Before making a final determination under clause (i), the Federal agencies referred to in clause (i) shall give appropriate consideration to comments submitted by the appropriate State regulatory authorities relating to the level of protection afforded to consumers under State law.

(iii) Federal preemption and ability of States to override Federal preemption

If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section affords greater protections than a comparable State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

(h) Non-discrimination against non-affiliated agents

The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) of this section shall not have the effect of discriminating, either intentionally or unintentionally, against any person engaged in insurance sales or solicitations that is not affiliated with a depository institution.

(Sept. 21, 1950, ch. 967, §2[47], as added Pub. L. 106–102, title III, §305, Nov. 12, 1999, 113 Stat. 1410.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 6805.

§ 1831y. CRA sunshine requirements

(a) Public disclosure of agreements

Any agreement (as defined in subsection (e) of this section) entered into after November 12, 1999, by an insured depository institution or affiliate with a nongovernmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.] involving funds or other resources of such insured depository institution or affiliate—

(1) shall be in its entirety fully disclosed, and the full text thereof made available to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution and to the public by each party to the agreement; and

(2) shall obligate each party to comply with this section.

(b) Annual report of activity by insured depository institution

Each insured depository institution or affiliate that is a party to an agreement described in subsection (a) of this section shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution, not less frequently than once each year, such information as the Federal banking agency may by rule require relating to the following actions taken by the party pursuant to the agreement during the preceding 12-month period:

(1) Payments, fees, or loans made to any party to the agreement or received from any party to the agreement and the terms and conditions of the same.

(2) Aggregate data on loans, investments, and services provided by each party in its community or communities pursuant to the agreement.

(3) Such other pertinent matters as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

(c) Annual report of activity by nongovernmental entities

(1) In general

Each nongovernmental entity or person that is not an affiliate of an insured depository institution and that is a party to an agreement described in subsection (a) of this section shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution that is a party to such agreement, not less frequently than once each year, an accounting of the use of funds received pursuant to each such agreement during the preceding 12-month period.

(2) Submission to insured depository institution

A nongovernmental entity or person referred to in paragraph (1) may comply with the reporting requirement in such paragraph by transmitting the report to the insured depository institution that is a party to the agreement, and such insured depository institution shall promptly transmit such report to the appropriate Federal banking agency with supervisory authority over the insured depository institution.

(3) Information to be included

The accounting referred to in paragraph (1) shall include a detailed, itemized list of the uses to which such funds have been made, including compensation, administrative expenses, travel, entertainment, consulting and professional fees paid, and such other categories, as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

(d) Applicability

Subsections (b) and (c) of this section shall not apply with respect to any agreement entered into before the end of the 6-month period beginning on November 12, 1999.

(e) Definitions

(1) Agreement

For purposes of this section, the term ''agreement''—

(A) means—

(i) any written contract, written arrangement, or other written understanding that provides for cash payments, grants, or other consideration with a value in excess of $10,000, or for loans the aggregate amount of principal of which exceeds $50,000, annually (or the sum of all such agreements during a 12-month period with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000); or

(ii) a group of substantively related contracts with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000, annually;

made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.], at least 1 party to which is an insured depository institution or affiliate thereof, whether organized on a profit or not-for-profit basis; and

(B) does not include—

(i) any individual mortgage loan;

(ii) any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities, if the funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to other parties; or

(iii) any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.].

(2) Fulfillment of CRA

For purposes of subparagraph (A), the term ''fulfillment'' means a list of factors that the

appropriate Federal banking agency determines have a material impact on the agency's decision—

(A) to approve or disapprove an application for a deposit facility (as defined in section 803 of the Community Reinvestment Act of 1977 [12 U.S.C. 2902]); or

(B) to assign a rating to an insured depository institution under section 807 of the Community Reinvestment Act of 1977 [12 U.S.C. 2906].

(f) Violations

(1) Violations by persons other than insured depository institutions or their affiliates

(A) Material failure to comply

If the party to an agreement described in subsection (a) of this section that is not an insured depository institution or affiliate willfully fails to comply with this section in a material way, as determined by the appropriate Federal banking agency, the agreement shall be unenforceable after the offending party has been given notice and a reasonable period of time to perform or comply.

(B) Diversion of funds or resources

If funds or resources received under an agreement described in subsection (a) of this section have been diverted contrary to the purposes of the agreement for personal financial gain, the appropriate Federal banking agency with supervisory responsibility over the insured depository institution may impose either or both of the following penalties:

(i) Disgorgement by the offending individual of funds received under the agreement.

(ii) Prohibition of the offending individual from being a party to any agreement described in subsection (a) of this section for a period of not to exceed 10 years.

(2) Designation of successor nongovernmental party

If an agreement described in subsection (a) of this section is found to be unenforceable under this subsection, the appropriate Federal banking agency may assist the insured depository institution in identifying a successor nongovernmental party to assume the responsibilities of the agreement.

(3) Inadvertent or de minimis reporting errors

An error in a report filed under subsection (c) of this section that is inadvertent or de minimis shall not subject the filing party to any penalty.

(g) Rule of construction

No provision of this section shall be construed as authorizing any appropriate Federal banking agency to enforce the provisions of any agreement described in subsection (a) of this section.

(h) Regulations

(1) In general

Each appropriate Federal banking agency shall prescribe regulations, in accordance with paragraph (4), requiring procedures reasonably designed to ensure and monitor compliance with the requirements of this section.

(2) Protection of parties

In carrying out paragraph (1), each appropriate Federal banking agency shall—

(A) ensure that the regulations prescribed by the agency do not impose an undue burden on the parties and that proprietary and confidential information is protected; and

(B) establish procedures to allow any nongovernmental entity or person who is a party to a large number of agreements described in subsection (a) of this section to make a single or consolidated filing of a report under subsection (c) of this section to an insured depository institution or an appropriate Federal banking agency.

(3) Parties not subject to reporting requirements

The Board of Governors of the Federal Reserve System may prescribe regulations—

(A) to prevent evasions of subsection (e)(1)(B)(iii) of this section; and

(B) to provide further exemptions under such subsection, consistent with the purposes of this section.

(4) Coordination, consistency, and comparability

In carrying out paragraph (1), each appropriate Federal banking agency shall consult and coordinate with the other such agencies for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(Sept. 21, 1950, ch. 967, § 2[48], as added Pub. L. 106–102, title VII, § 711, Nov. 12, 1999, 113 Stat. 1465.)

REFERENCES IN TEXT

The Community Reinvestment Act of 1977, referred to in subsecs. (a) and (e)(1)(A), (B)(iii), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

§ 1832. Withdrawals by negotiable or transferable instruments for transfers to third parties

(a) Authority of depository institution; applicability

(1) Notwithstanding any other provision of law but subject to paragraph (2), a depository institution is authorized to permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

(2) Paragraph (1) shall apply only with respect to deposits or accounts which consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the Dis-

trict of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof.

(b) "Depository institution" defined

For purposes of this section, the term ''depository institution'' means—

(1) any insured bank as defined in section 1813 of this title;

(2) any State bank as defined in section 1813 of this title;

(3) any mutual savings bank as defined in section 1813 of this title;

(4) any savings bank as defined in section 1813 of this title;

(5) any insured institution as defined in section 1724[1] of this title; and

(6) any building and loan association or savings and loan association organized and operated according to the laws of the State in which it is chartered or organized; and, for purposes of this paragraph, the term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(c) Fine

Any depository institution which violates this section shall be fined $1,000 for each violation.

(Pub. L. 93–100, § 2, Aug. 16, 1973, 87 Stat. 342; Pub. L. 94–222, § 2, Feb. 27, 1976, 90 Stat. 197; Pub. L. 95–630, title XIII, § 1301, Nov. 10, 1978, 92 Stat. 3712; Pub. L. 96–161, title I, § 106, Dec. 28, 1979, 93 Stat. 1235; Pub. L. 96–221, title III, § 303, Mar. 31, 1980, 94 Stat. 146; Pub. L. 97–320, title VII, § 706(a), Oct. 15, 1982, 96 Stat. 1540; Pub. L. 100–86, title I, § 109, Aug. 10, 1987, 101 Stat. 579.)

REFERENCES IN TEXT

Section 1724 of this title, referred to in subsec. (b)(5), was repealed by Pub. L. 101–73, title IV, § 407, Aug. 9, 1989, 103 Stat. 363.

CODIFICATION

Section was not enacted as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a)(2). Pub. L. 100–86 inserted ''political,'' after ''educational,''.

1982—Subsec. (a)(2). Pub. L. 97–320 inserted provisions relating to deposits of public funds.

1980—Subsec. (a). Pub. L. 96–221 designated existing provisions as par. (1) inserted provisions expanding authorization for withdrawals from selected States to the entire United States, and added par. (2).

1979—Subsec. (a). Pub. L. 96–161 inserted ''New Jersey,'' after ''New York,''.

1978—Subsec. (a). Pub. L. 95–630 inserted ''New York,'' after ''Vermont,''.

1976—Subsec. (a). Pub. L. 94–222 authorized withdrawals by negotiable or transferable instruments in the States of Connecticut, Rhode Island, Maine, and Vermont.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective Dec. 31, 1980, see section 306 of Pub. L. 96–221, set out as a note under section 371a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1302 of title XIII of Pub. L. 95–630 provided that: ''This title [amending this section] shall take effect upon enactment [Nov. 10, 1978].''

EFFECTIVE DATE

Section effective on thirtieth day after Aug. 16, 1973, see section 8 of Pub. L. 93–100, set out as a note under section 1469 of this title.

§ 1833. Repealed. Pub. L. 104–208, div. A, title II, § 2224(b), Sept. 30, 1996, 110 Stat. 3009–415

Section, Pub. L. 101–73, title IX, § 918, Aug. 9, 1989, 103 Stat. 487, required certain agencies to annually report to Congress detailing civil and criminal actions and investigations undertaken during preceding 12-month period.

§ 1833a. Civil penalties

(a) In general

Whoever violates any provision of law to which this section is made applicable by subsection (c) of this section shall be subject to a civil penalty in an amount assessed by the court in a civil action under this section.

(b) Maximum amount of penalty

(1) Generally

The amount of the civil penalty shall not exceed $1,000,000.

(2) Special rule for continuing violations

In the case of a continuing violation, the amount of the civil penalty may exceed the amount described in paragraph (1) but may not exceed the lesser of $1,000,000 per day or $5,000,000.

(3) Special rule for violations creating gain or loss

(A) If any person derives pecuniary gain from the violation, or if the violation results in pecuniary loss to a person other than the violator, the amount of the civil penalty may exceed the amounts described in paragraphs (1) and (2) but may not exceed the amount of such gain or loss.

(B) As used in this paragraph, the term ''person'' includes the Bank Insurance Fund, the Savings Association Insurance Fund, and the National Credit Union Share Insurance Fund.

(c) Violations to which penalty is applicable

This section applies to a violation of, or a conspiracy to violate—

(1) section 215, 656, 657, 1005, 1006, 1007, 1014, or 1344 of title 18; or

(2) section 287, 1001, 1032,[1] 1341 or 1343 of title 18 affecting a federally insured financial institution.

This section shall apply to violations occurring on or after August 10, 1984.

(d) Attorney General to bring action

A civil action to recover a civil penalty under this section shall be commenced by the Attorney General.

(e) Burden of proof

In a civil action to recover a civil penalty under this section, the Attorney General must

[1] See References in Text note below.

[1] See 1990 Amendment note below.

establish the right to recovery by a preponderance of the evidence.

(f) Administrative subpoenas

(1) In general

For the purpose of conducting a civil investigation in contemplation of a civil proceeding under this section, the Attorney General may—

(A) administer oaths and affirmations;

(B) take evidence; and

(C) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records which the Attorney General deems relevant or material to the inquiry. Such subpoena may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

(2) Procedures applicable

The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18 apply with respect to a subpoena issued under this subsection. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

(3) Limitation

In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under paragraph (2) not later than 5 days after the date of service.

(g) Statute of limitations

A civil action under this section may not be commenced later than 10 years after the cause of action accrues.

(Pub. L. 101–73, title IX, § 951, Aug. 9, 1989, 103 Stat. 498; Pub. L. 101–647, title XXV, §§ 2533, 2596(d), Nov. 29, 1990, 104 Stat. 4882, 4908; Pub. L. 103–322, title XXXIII, § 330003(g), Sept. 13, 1994, 108 Stat. 2141; Pub. L. 104–208, div. A, title II, § 2704(d)(15)(A), Sept. 30, 1996, 110 Stat. 3009–494.)

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1996—Subsec. (b)(3)(B). Pub. L. 104–208, which directed substitution of ''Deposit Insurance Fund'' for ''Bank Insurance Fund, the Savings Association Insurance Fund,'', was not executed. See Effective Date of 1996 Amendment note below.

1994—Subsec. (c). Pub. L. 103–322 amended directory language of Pub. L. 101–647, § 2596(d). See 1990 Amendment note below.

1990—Subsec. (c). Pub. L. 101–647, § 2596(d)(2), as amended by Pub. L. 103–322, inserted at end a flush sentence ''This section shall apply to violations occurring on or after August 10, 1984.''

Subsec. (c)(2). Pub. L. 101–647, § 2596(d)(1), as amended by Pub. L. 103–322, which directed insertion of ''287, 1001, 1032,'' before ''1341;'', was executed by making the insertion before ''1341 or 1343'' to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 101–647, § 2533, added subsec. (g).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330003(g) of Pub. L. 103–322 provided that the amendment made by that section is effective retroactively to the date of enactment of Pub. L. 101–647, which was approved Nov. 29, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1831k, 3412, 4201, 4202, 4204 of this title; title 18 section 3322.

§ 1833b. Comparability in compensation schedules

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration Board, the Federal Housing Finance Board, the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, the Farm Credit Administration, and the Office of Thrift Supervision, in establishing and adjusting schedules of compensation and benefits which are to be determined solely by each agency under applicable provisions of law, shall inform the heads of the other agencies and the Congress of such compensation and benefits and shall seek to maintain comparability regarding compensation and benefits.

(Pub. L. 101–73, title XII, § 1206, Aug. 9, 1989, 103 Stat. 523; Pub. L. 102–233, title III, § 302(a), Dec. 12, 1991, 105 Stat. 1767.)

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

§ 1833c. Comptroller General audit and access to records

(a) Audit of agencies or other persons performing functions under banking laws

(1) In general

Except as provided in paragraph (2), all agencies, corporations, organizations, and other persons of any description which perform any function or activity under this Act, or any other Act which is amended by this Act, shall be subject to audit by the Comptroller General of the United States with respect to such function or activity.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) any function or activity of the Board of Governors of the Federal Reserve System or the Federal Reserve banks that is described in any paragraph of section 714(b) of title 31; and

(B) any function or activity of the Federal National Mortgage Association, except as provided in section 1723a(j) of this title.

(b) Audit of persons providing certain goods or services

All persons and organizations which, by contract, grant, or otherwise, provide goods or services to, or receive financial assistance from, any agency or other person performing functions or activities under this Act shall be subject to audit by the Comptroller General with respect to such provision of goods or services or receipt of financial assistance.

(c) Provisions applicable to audits under this section

(1) Nature and scope of audit

The Comptroller General shall determine the nature, scope, and terms and conditions of audits conducted under this section.

(2) Coordination with other provisions of law

The authority of the Comptroller General under this section shall be in addition to any audit authority available to the Comptroller General under other provisions of this Act or any other law.

(3) Rights of access, examination, and copying

The Comptroller General, and any duly authorized representative of the Comptroller General, shall have access to, and the right to examine and copy, all records and other recorded information in any form, and to examine any property, within the possession or control of any agency or person which is subject to audit under this section which the Comptroller General deems relevant to an audit conducted under this section.

(4) Enforcement of right of access

The Comptroller General's right of access to information under this section shall be enforceable pursuant to section 716 of title 31.

(5) Maintenance of confidential records

The provisions of section 716(e) of title 31 shall apply to information obtained by the Comptroller General under this section.

(Pub. L. 101–73, title XII, § 1213, Aug. 9, 1989, 103 Stat. 528.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (b), and (c)(2), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183, known as the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

§ 1833d. Repealed. Pub. L. 102–242, title I, § 121(b), Dec. 19, 1991, 105 Stat. 2251

Section, Pub. L. 101–73, title XII, § 1215, Aug. 9, 1989, 103 Stat. 529, related to establishment of uniform capital and accounting standards for federally-insured depository institutions. See section 1831n of this title.

§ 1833e. Equal opportunity

(a) In general

For purposes of this Act, Executive Order Numbered 11478, providing for equal employment opportunity in the Federal Government, shall apply to—

(1) the Comptroller of the Currency;

(2) the Director of the Office of Thrift Supervision;

(3) the Federal home loan banks;

(4) the Federal Deposit Insurance Corporation;

(5) the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation; and

(6) the Resolution Trust Corporation.

(b) Affirmative program for equal employment opportunity

For purposes of this Act, sections 1 and 2 of Executive Order Numbered 11478, providing for the adoption and implementation of equal employment opportunity, shall apply to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(c) Solicitation of contracts

The Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Housing Finance Board, the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, and the Resolution Trust Corporation shall each prescribe regulations to establish and oversee a minority outreach program within each such agency to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency.

(d) Report to Congress

Before the end of the 180-day period beginning on August 9, 1989—

(1) the Federal Deposit Insurance Corporation;

(2) the Comptroller of the Currency;

(3) the Director of the Office of Thrift Supervision;

(4) the Federal Housing Finance Board;

(5) the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation;

(6) the Resolution Trust Corporation;

(7) the Federal Home Loan Mortgage Corporation; and

(8) the Federal National Mortgage Association,

shall each submit to the Congress a report containing a complete description of the actions taken by such agency pursuant to subsections (a) and (b) of this section and such recommendations for administrative and legislative action as each such agency may determine to be appropriate to carry out the purposes of such subsection.

(Pub. L. 101–73, title XII, § 1216, Aug. 9, 1989, 103 Stat. 529; Pub. L. 102–233, title III, § 302(a), Dec. 12, 1991, 105 Stat. 1767.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (b), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183, known as the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of this title and Tables.

Executive Order Numbered 11478, referred to in subsecs. (a) and (b), is set out as a note under section 2000e of Title 42, The Public Health and Welfare.

CODIFICATION

Section was enacted as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

CHANGE OF NAME

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102–233, set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)–(d) of Pub. L. 105–216, set out as a note under section 1441a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1441a, 1821 of this title.

§ 1834. Reduced assessment rate for deposits attributable to lifeline accounts

(a) Qualification of lifeline accounts by Federal Reserve Board

(1) In general

The Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall establish minimum requirements for accounts providing basic transaction services for consumers at insured depository institutions in order for such accounts to qualify as lifeline accounts for purposes of this section and section 1817(b)(2)(H) of this title.

(2) Factors to be considered

In determining the minimum requirements under paragraph (1) for lifeline accounts at insured depository institutions, the Board and the Corporation shall consider the following factors:

(A) Whether the account is available to provide basic transaction services for individuals who maintain a balance of less than $1,000 or such other amount which the Board may determine to be appropriate.

(B) Whether any service charges or fees to which the account is subject, if any, for routine transactions do not exceed a minimal amount.

(C) Whether any minimum balance or minimum opening requirement to which the account is subject, if any, is not more than a minimal amount.

(D) Whether checks, negotiable orders of withdrawal, or similar instruments for making payments or other transfers to third parties may be drawn on the account.

(E) Whether the depositor is permitted to make more than a minimal number of withdrawals from the account each month by any means described in subparagraph (D) or any other means.

(F) Whether a monthly statement itemizing all transactions for the monthly reporting period is made available to the depositor with respect to such account or a passbook is provided in which all transactions with respect to such account are recorded.

(G) Whether depositors are permitted access to tellers at the institution for conducting transactions with respect to such account.

(H) Whether other account relationships with the institution are required in order to open any such account.

(I) Whether individuals are required to meet any prerequisite which discriminates against low-income individuals in order to open such account.

(J) Such other factors as the Board may determine to be appropriate.

(3) Definitions

For purposes of this subsection—

(A) Board

The term ''Board'' means the Board of Governors of the Federal Reserve System.

(B) Insured depository institution

The term ''insured depository institution'' has the meaning given to such term in section 1813(c)(2) of this title.

(C) Lifeline account

The term ''lifeline account'' means any transaction account (as defined in section 461(b)(1)(C) of this title) which meets the minimum requirements established by the Board under this subsection.

(b) Omitted

(c) Availability of funds

The provisions of this section shall not take effect until appropriations are specifically provided in advance. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(Pub. L. 102–242, title II, § 232, Dec. 19, 1991, 105 Stat. 2308; Pub. L. 102–550, title XVI, §§ 1604(b)(1), 1605(a)(3), Oct. 28, 1992, 106 Stat. 4083, 4085; Pub. L. 102–558, title III, §§ 303(b)(1), (4), 305, Oct. 28, 1992, 106 Stat. 4224–4226; Pub. L. 104–208, div. A, title II, § 2704(d)(16), Sept. 30, 1996, 110 Stat. 3009–495.)

CODIFICATION

Section was enacted as part of the Bank Enterprise Act of 1991, and also as part of the Foreign Bank Supervision Enhancement Act of 1991 and as part of the Federal Deposit Insurance Corporation Improvement Act

of 1991, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

Section is comprised of section 232 of Pub. L. 102–242. Subsec. (b) of section 232 of Pub. L. 102–242 amended section 1817 of this title.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–208, which directed substitution of ''section 1817(b)(2)(G) of this title'' for ''section 1817(b)(2)(H) of this title'', was not executed. See Effective Date of 1996 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–558, § 303(b)(4), substituted ''section 1817(b)(2)(H)'' for ''section 1817(b)(10)''. Pub. L. 102–550, § 1605(a)(3), which made an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b). Pub. L. 102–558, § 303(b)(1), made technical correction to directory language of subsec. (b)(1). See Codification note above. Pub. L. 102–550, § 1604(b)(1), which made a similar amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104–208, set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Section 303(b)(4) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(a) of Pub. L. 102–242 [see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title].

Section 1605(a)(3) of Pub. L. 102–550, which provided effective date provisions for the amendment made by that section, was repealed, effective Oct. 28, 1992, by section 305 of Pub. L. 102–558, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1817 of this title.

§ 1834a. Assessment credits for qualifying activities relating to distressed communities

(a) Determination of credits for increases in community enterprise activities

(1) In general

The Community Enterprise Assessment Credit Board established under subsection (d) of this section shall issue guidelines for insured depository institutions eligible under this subsection for any community enterprise assessment credit with respect to any semiannual period. Such guidelines shall—

(A) designate the eligibility requirements for any institution meeting applicable capital standards to receive an assessment credit under section 1817(b)(7) of this title; and

(B) determine the community enterprise assessment credit available to any eligible institution under paragraph (3).

(2) Qualifying activities

An insured depository institution may apply for for[1] any community enterprise assessment credit for any semiannual period for—

(A) the amount, during such period, of new originations of qualified loans and other assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neighborhoods, which the Board determines are qualified to be taken into account for purposes of this subsection;

(B) the amount, during such period, of deposits accepted from persons domiciled in the distressed community, at any office of the institution (including any branch) located in any qualified distressed community, and new originations of any loans and other financial assistance made within that community, except that in no case shall the credit for deposits at any institution or branch exceed the credit for loans and other financial assistance by the bank or branch in the distressed community; and

(C) any increase during the period in the amount of new equity investments in community development financial institutions.

(3) Amount of assessment credit

The amount of any community enterprise assessment credit available under section 1817(b)(7) of this title for any insured depository institution, or a qualified portion thereof, shall be the amount which is equal to 5 percent, in the case of an institution which does not meet the community development organization requirements under section 1834b of this title, and 15 percent, in the case of an institution, or a qualified portion thereof, which meets such requirements (or any percentage designated under paragraph (5)) of—

(A) for the first full semiannual period in which community enterprise assessment credits are available, the sum of—

(i) the amounts of assets described in paragraph (2)(A); and

(ii) the amounts of deposits, loans, and other financial assistance described in paragraph (2)(B); and

(B) for any subsequent semiannual period, the sum of—

(i) any increase during such period in the amount of assets described in paragraph (2)(A) that has been deemed eligible for credit by the Board; and

(ii) any increase during such period in the amounts of deposits, loans, and other financial assistance described in paragraph (2)(B) that has been deemed eligible for credit by the Board.

(4) Determination of qualified loans and other financial assistance

Except as provided in paragraph (6), the types of loans and other assistance which the Board may determine to be qualified to be taken into account under paragraph (2)(A) for purposes of the community enterprise assessment credit, may include the following:

(A) Loans insured or guaranteed by the Secretary of Housing and Urban Development, the Secretary of the Department of Veterans Affairs, the Administrator of the Small Business Administration, and the Secretary of Agriculture.

(B) Loans or financing provided in connection with activities assisted by the Adminis-

[1] So in original.

trator of the Small Business Administration or any small business investment company and investments in small business investment companies.

(C) Loans or financing provided in connection with any neighborhood housing service program assisted under the Neighborhood Reinvestment Corporation Act [42 U.S.C. 8101 et seq.].

(D) Loans or financing provided in connection with any activities assisted under the community development block grant program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(E) Loans or financing provided in connection with activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.].

(F) Loans or financing provided in connection with a homeownership program assisted under title III of the United States Housing Act of 1937 [42 U.S.C. 1437aaa et seq.] or subtitle B or C of title IV of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12871 et seq., 12891 et seq.].

(G) Financial assistance provided through community development corporations.

(H) Federal and State programs providing interest rate assistance for homeowners.

(I) Extensions of credit to nonprofit developers or purchasers of low-income housing and small business developments.

(J) In the case of members of any Federal home loan bank, participation in the community investment fund program established by the Federal home loan banks.

(K) Conventional mortgages targeted to low- or moderate-income persons.

(L) Loans made for the purpose of developing or supporting—

(i) commercial facilities that enhance revitalization, community stability, or job creation and retention efforts;

(ii) business creation and expansion efforts that—

(I) create or retain jobs for low-income people;

(II) enhance the availability of products and services to low-income people; or

(III) create or retain businesses owned by low-income people or residents of a targeted area;

(iii) community facilities that provide benefits to low-income people or enhance community stability;

(iv) home ownership opportunities that are affordable to low-income households;

(v) rental housing that is principally affordable to low-income households; and

(vi) other activities deemed appropriate by the Board.

(M) The provision of technical assistance to residents of qualified distressed communities in managing their personal finances through consumer education programs either sponsored or offered by insured depository institutions.

(N) The provision of technical assistance and consulting services to newly formed small businesses located in qualified distressed communities.

(O) The provision of technical assistance to, or servicing the loans of low- or moderate-income homeowners and homeowners located in qualified distressed communities.

(5) Adjustment of percentage

The Board may increase or decrease the percentage referred to in paragraph (3)(A) for determining the amount of any community enterprise assessment credit pursuant to such paragraph, except that the percentage established for insured depository institutions which meet the community development organization requirements under section 1834b of this title shall not be less than 3 times the amount of the percentage applicable for insured depository institutions which do not meet such requirements.

(6) Certain investments not eligible to be taken into account

Loans, financial assistance, and equity investments made by any insured depository institution that are not the result of originations by the institution shall not be taken into account for purposes of determining the amount of any credit pursuant to this subsection.

(7) Quantitative analysis of technical assistance

The Board may establish guidelines for analyzing the technical assistance described in subparagraphs (M), (N), and (O) of paragraph (4) for the purpose of quantifying the results of such assistance in determining the amount of any community assessment credit under this subsection.

(b) "Qualified distressed community" defined

(1) In general

For purposes of this section, the term ''qualified distressed community'' means any neighborhood or community which—

(A) meets the minimum area requirements under paragraph (3) and the eligibility requirements of paragraph (4); and

(B) is designated as a distressed community by any insured depository institution in accordance with paragraph (2) and such designation is not disapproved under such paragraph.

(2) Designation requirements

(A) Notice of designation

(i) Notice to agency

Upon designating an area as a qualified distressed community, an insured depository institution shall notify the appropriate Federal banking agency of the designation.

(ii) Public notice

Upon the effective date of any designation of an area as a qualified distressed community, an insured depository institution shall publish a notice of such designation in major newspapers and other community publications which serve such area.

(B) Agency duties relating to designations

(i) Providing information

At the request of any insured depository institution, the appropriate Federal banking agency shall provide to the institution appropriate information to assist the institution to identify and designate a qualified distressed community.

(ii) Period for disapproval

Any notice received by the appropriate Federal banking agency from any insured depository institution under subparagraph (A)(i) shall take effect at the end of the 90-day period beginning on the date such notice is received unless written notice of the approval or disapproval of the application by the agency is provided to the institution before the end of such period.

(3) Minimum area requirements

For purposes of this subsection, an area meets the requirements of this paragraph if—

(A) the area is within the jurisdiction of 1 unit of general local government;

(B) the boundary of the area is contiguous; and

(C) the area—

(i) has a population, as determined by the most recent census data available, of not less than—

(I) 4,000, if any portion of such area is located within a metropolitan statistical area (as designated by the Director of the Office of Management and Budget) with a population of 50,000 or more; or

(II) 1,000, in any other case; or

(ii) is entirely within an Indian reservation (as determined by the Secretary of the Interior).

(4) Eligibility requirements

For purposes of this subsection, an area meets the requirements of this paragraph if the following criteria are met:

(A) At least 30 percent of the residents residing in the area have incomes which are less than the national poverty level.

(B) The unemployment rate for the area is 1½ times greater than the national average (as determined by the Bureau of Labor Statistics' most recent figures).

(C) Such additional eligibility requirements as the Board may, in its discretion, deem necessary to carry out the provisions of this subtitle.

(c) Omitted

(d) Community Enterprise Assessment Credit Board

(1) Establishment

There is hereby established the ''Community Enterprise Assessment Credit Board''.

(2) Number and appointment

The Board shall be composed of 5 members as follows:

(A) The Secretary of the Treasury or a designee of the Secretary.

(B) The Secretary of Housing and Urban Development or a designee of the Secretary.

(C) The Chairperson of the Federal Deposit Insurance Corporation or a designee of the Chairperson.

(D) 2 individuals appointed by the President from among individuals who represent community organizations.

(3) Terms

(A) Appointed members

Each appointed member shall be appointed for a term of 5 years.

(B) Interim appointment

Any member appointed to fill a vacancy occurring before the expiration of the term to which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(C) Continuation of service

Each appointed member may continue to serve after the expiration of the period to which such member was appointed until a successor has been appointed.

(4) Chairperson

The Secretary of the Treasury shall serve as the Chairperson of the Board.

(5) No pay

No members of the Commission may receive any pay for service on the Board.

(6) Travel expenses

Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(7) Meetings

The Board shall meet at the call of the Chairperson or a majority of the Board's members.

(e) Duties of Board

(1) Procedure for determining community enterprise assessment credits

The Board shall establish procedures for accepting and considering applications by insured depository institutions under subsection (a)(1) of this section for community enterprise assessment credits and making determinations with respect to such applications.

(2) Notice to FDIC

The Board shall notify the applicant and the Federal Deposit Insurance Corporation of any determination of the Board with respect to any application referred to in paragraph (1) in sufficient time for the Corporation to include the amount of such credit in the computation of the semiannual assessment to which such credit is applicable.

(f) Availability of funds

The provisions of this section shall not take effect until appropriations are specifically provided in advance. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(g) Prohibition on double funding for same activities

No community development financial institution may receive a community enterprise assess-

ment credit if such institution, either directly or through a community partnership—

(1) has received assistance within the preceding 12-month period, or has an application for assistance pending, under section 4704 of this title; or

(2) has ever received assistance, under section 4707 of this title, for the same activity during the same semiannual period for which the institution seeks a community enterprise assessment credit under this section.

(h) Priority of awards

(1) Qualifying loans and services

(A) In general

If the amount of funds appropriated for purposes of carrying out this section for any fiscal year are insufficient to award the amount of assessment credits for which insured depository institutions have applied and are eligible under this section, the Board shall, in awarding community enterprise assessment credits for qualifying activities under subparagraphs (A) and (B) of subsection (a)(2) of this section for any semiannual period for which such appropriation is available, determine which institutions shall receive an award.

(B) Priority for support of efforts of CDFI

The Board shall give priority to institutions that have supported the efforts of community development financial institutions in the qualified distressed community.

(C) Other factors

The Board may also consider the following factors:

(i) Degree of difficulty

The degree of difficulty in carrying out the activities that form the basis for the institution's application.

(ii) Community impact

The extent to which the activities that form the basis for the institution's application have benefited the qualified distressed community.

(iii) Innovation

The degree to which the activities that form the basis for the institution's application have incorporated innovative methods for meeting community needs.

(iv) Leverage

The leverage ratio between the dollar amount of the activities that form the basis for the institution's application and the amount of the assessment credit calculated in accordance with this section for such activities.

(v) Size

The amount of total assets of the institution.

(vi) New entry

Whether the institution had provided financial services in the designated distressed community before such semiannual period.

(vii) Need for subsidy

The degree to which the qualified activity which forms the basis for the application needs enhancement through an assessment credit.

(viii) Extent of distress in community

The degree of poverty and unemployment in the designated distressed community, the proportion of the total population of the community which are low-income families and unrelated individuals, and the extent of other adverse economic conditions in such community.

(2) Qualifying investments

If the amount of funds appropriated for purposes of carrying out this section for any fiscal year are insufficient to award the amount of assessment credits for which insured depository institutions have applied and are eligible under this section, the Board shall, in awarding community enterprise assessment credits for qualifying activities under subsection (a)(2)(C) of this section for any semiannual period for which such appropriation is available, determine which institutions shall receive an award based on the leverage ratio between the dollar amount of the activities that form the basis for the institution's application and the amount of the assessment credit calculated in accordance with this section for such activities.

(i) Determination of amount of assessment credit

Notwithstanding any other provision of this section, the determination of the amount of any community enterprise assessment credit under subsection (a)(3) of this section for any insured depository institution for any semiannual period shall be made solely at the discretion of the Board. No insured depository institution shall be awarded community enterprise assessment credits for any semiannual period in excess of an amount determined by the Board.

(j) Definitions

For purposes of this section—

(1) Appropriate Federal banking agency

The term ''appropriate Federal banking agency'' has the meaning given to such term in section 1813(q) of this title.

(2) Board

The term ''Board'' means the Community Enterprise Assessment Credit Board established under the amendment made[2] by subsection (d) of this section.

(3) Insured depository institution

The term ''insured depository institution'' has the meaning given to such term in section 1813(c)(2) of this title.

(4) Community development financial institution

The term ''community development financial institution'' has the same meaning as in section 4702(5) of this title.

[2] So in original. The words ''under the amendment made'' probably should not appear.

(5) Affiliate

The term ''affiliate'' has the same meaning as in section 1841 of this title.

(Pub. L. 102–242, title II, § 233, Dec. 19, 1991, 105 Stat. 2311; Pub. L. 102–550, title IX, § 931(c)–(e), title XVI, §§ 1604(b)(2), 1605(a)(7), Oct. 28, 1992, 106 Stat. 3888, 3889, 4083, 4086; Pub. L. 102–558, title III, §§ 303(b)(2), (9), 305, Oct. 28, 1992, 106 Stat. 4224, 4226; Pub. L. 103–325, title I, § 114(c), Sept. 23, 1994, 108 Stat. 2181.)

REFERENCES IN TEXT

The Neighborhood Reinvestment Corporation Act, referred to in subsec. (a)(4)(C), is title VI of Pub. L. 95–557, Oct. 31, 1978, 92 Stat. 2115, which is classified to subchapter I (§ 8101 et seq.) of chapter 90 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 601 of Pub. L. 95–557, set out as a Short Title note under section 8101 of Title 42 and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (a)(4)(D), is Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Act is classified principally to chapter 69 (§ 5301 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 42 and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(4)(E), (F), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, also known as the ''HOME Investment Partnerships Act'', is classified principally to subchapter II (§ 12721 et seq.) of chapter 130 of Title 42. Subtitles B and C of title IV of the Act are classified respectively to parts A (§ 12871 et seq.) and B (§ 12891 et seq.) of subchapter IV of chapter 130 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of Title 42 and Tables.

The United States Housing Act of 1937, referred to in subsec. (a)(4)(F), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653. Title III of the Act is classified generally to subchapter II–A (§ 1437aaa et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

This subtitle, referred to in subsec. (b)(4)(C), is subtitle C (§§ 231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308, known as the Bank Enterprise Act of 1991, which enacted this section and sections 1834 and 1834b of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of subtitle C to the Code, see section 231 of Pub. L. 102–242, set out as a Short Title of 1991 Amendment note under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Bank Enterprise Act of 1991, and also as part of the Foreign Bank Supervision Enhancement Act of 1991 and as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

Section is comprised of section 233 of Pub. L. 102–242. Subsec. (c) of section 233 of Pub. L. 102–242 amended section 1817 of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–325, § 114(c)(1)(A), substituted ''may apply for'' for ''shall be eligible'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 103–325, § 114(c)(1)(B), substituted ''assistance'' for ''financial assistance''.

Subsec. (a)(2)(C). Pub. L. 103–325, § 114(c)(1)(C) to (E), added subpar. (C).

Subsec. (a)(4). Pub. L. 103–325, § 114(c)(2)(A), struck out ''financial'' before ''assistance'' in introductory provisions.

Subsec. (a)(4)(L) to (O). Pub. L. 103–325, § 114(c)(2)(B), added subpars. (L) to (O).

Subsec. (a)(5). Pub. L. 103–325, § 114(c)(3), substituted ''paragraph (3)(A)'' for ''paragraph (3)''.

Subsec. (a)(6). Pub. L. 103–325, § 114(c)(4), substituted ''Loans, financial assistance, and equity investments made by any insured depository institution'' for ''Investments by any insured depository institution in loans and securities''.

Subsec. (a)(7). Pub. L. 103–325, § 114(c)(5), added par. (7).

Subsec. (g). Pub. L. 103–325, § 114(c)(6), added subsec. (g) and redesignated former subsec. (g) as (j).

Subsecs. (h), (i). Pub. L. 103–325, § 114(c)(7), added subsecs. (h) and (i).

Subsec. (j). Pub. L. 103–325, § 114(c)(6)(A), redesignated subsec. (g) as (j).

Subsec. (j)(4), (5). Pub. L. 103–325, § 114(a)(8), added pars. (4) and (5).

1992—Subsec. (a)(1)(A). Pub. L. 102–558, § 303(b)(9)(A), substituted ''section 1817(b)(7)'' for ''section 1817(d)(4)''. Pub. L. 102–550, § 1605(a)(7)(A), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (a)(2). Pub. L. 102–550, § 931(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''An insured depository institution shall be eligible for any community enterprise assessment credit for any semiannual period for—

''(A) any increase during such period in the amount of new originations of qualified loans and other financial assistance provided for low- and moderate-income persons in distressed communities, or enterprises integrally involved with such neighborhoods, which the Board determines are qualified to be taken into account for purposes of this subsection; and

''(B) any increase during such period in the amount of deposits accepted from persons domiciled in the distressed community, at any office of the institution (including any branch) located in any qualified distressed community, and any increase during such period in the amount of new originations of loans and other financial assistance made within that community, except that in no case shall the credit for increased deposits at any institution or branch exceed the credit for increased loan and other financial assistance by the bank or branch in the distressed community.''

Subsec. (a)(3). Pub. L. 102–558, § 303(b)(9)(B), substituted ''section 1817(b)(7)'' for ''section 1817(d)(4)''. Pub. L. 102–550, § 1605(a)(7)(B), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Pub. L. 102–558, § 303(b)(2), which directed technical amendment to reference to section 1834b of this title to correct reference to corresponding section of original act, could not be executed because of prior general amendment by Pub. L. 102–550, § 931(d). See below. Pub. L. 102–550, § 1604(b)(2), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Pub. L. 102–550, § 931(d), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The amount of any community enterprise assessment credit available under section 1817(d)(4) of this title for any insured depository institution, or a qualified portion thereof, for any semiannual period shall be the amount which is equal to 5 percent, in the case of an institution which does not meet the community development organization requirements under section 1834b of this title, and 15 percent, in the case of an institution, or a qualified portion thereof, which meets such requirements (or any percentage designated under paragraph (5)) of the sum of—

''(A) the amounts of assets described in paragraph (2)(A); and

''(B) the amounts of deposits, loans, and other extensions of credit described in paragraph (2)(B).''

Subsec. (a)(5). Pub. L. 102–558, § 303(b)(2), made technical amendment to reference to section 1834b of this title to correct reference to corresponding section of original act. Pub. L. 102–550, § 1604(b)(2), which made identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

Subsec. (b)(4). Pub. L. 102–550, § 931(e), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''For purposes of this subsection, an area meets the requirements of this paragraph if at least 2 of the following criteria are met:

''(A) INCOME.—At least 70 percent of the families and unrelated individuals residing in the area have incomes of less than 80 percent of the median income of the area.

''(B) POVERTY.—At least 20 percent of the residents residing in the area have incomes which are less than the national poverty level (as determined pursuant to criteria established by the Director of the Office of Management and Budget).

''(C) UNEMPLOYMENT.—The unemployment rate for the area is one and one-half times greater than the national average (as determined by the Bureau of Labor Statistic's most recent figures).''

Subsec. (e)(2). Pub. L. 102–558, § 303(b)(9)(C), substituted ''of the semiannual assessment to which such credit is applicable'' for ''made for purposes of the notification required under section 1817(d)(1)(B) of this title''. Pub. L. 102–550, § 1605(a)(7)(C), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102–558, § 305, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 303(b)(2) of Pub. L. 102–558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102–558, set out as a note under section 2062 of Title 50, Appendix, War and National Defense.

Section 303(b)(9) of Pub. L. 102–558 provided that the amendment made by that section is effective on the effective date of the amendment made by section 302(e)(4) of Pub. L. 102–242 [see section 302(g) of Pub. L. 102–242, set out as a note under section 1817 of this title].

Section 1605(a)(7) of Pub. L. 102–550, which provided effective date provisions for the amendment made by that section, was repealed, effective Oct. 28, 1992, by section 305 of Pub. L. 102–558, set out as a Repeal of Duplicative Provisions note under section 1815 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1834b, 4713 of this title; title 42 section 5318a.

§ 1834b. Community development organizations

(a) Community development organizations described

For purposes of this subtitle, any insured depository institution, or a qualified portion thereof, shall be treated as meeting the community development organization requirements of this section if—

(1) the institution—

(A) is a community development bank, or controls any community development bank, which meets the requirements of subsection (b) of this section;

(B) controls any community development corporation, or maintains any community development unit within the institution, which meets the requirements of subsection (c) of this section;

(C) invests in accounts in any community development credit union designated as a low-income credit union, subject to restrictions established for such credit unions by the National Credit Union Administration Board; or

(D) invests in a community development organization jointly controlled by two or more institutions;

(2) except in the case of an institution which is a community development bank, the amount of the capital invested, in the form of debt or equity, by the institution in the community development organization referred to in paragraph (1) (or, in the case of any community development unit, the amount which the institution irrevocably makes available to such unit for the purposes described in paragraph (3)) is not less than the greater of—

(A) ½ of 1 percent of the capital, as defined by generally accepted accounting principles, of the institution; or

(B) the sum of the amounts invested in such community development organization; and

(3) the community development organization provides loans for residential mortgages, home improvement, and community development and other financial services, other than financing for the purchase of automobiles or extension of credit under any open-end credit plan (as defined in section 1602(i) of title 15), to low- and moderate-income persons, nonprofit organizations, and small businesses located in qualified distressed communities in a manner consistent with the intent of this subtitle.

(b) Community development bank requirements

A community development bank meets the requirements of this subsection if—

(1) the community development bank has a 15-member advisory board designated as the ''Community Investment Board'' and consisting entirely of community leaders who—

(A) shall be appointed initially by the board of directors of the community development bank and thereafter by the Community Investment Board from nominations received from the community; and

(B) are appointed for a single term of 2 years, except that, of the initial members appointed to the Community Investment Board, ⅓ shall be appointed for a term of 8 months, ⅓ shall be appointed for a term of 16 months, and ⅓ shall be appointed for a term of 24 months, as designated by the board of directors of the community development bank at the time of the appointment;

(2) ⅓ of the members of the community development bank's board of directors are appointed from among individuals nominated by the Community Investment Board; and

(3) the bylaws of the community development bank require that the board of directors of the bank meet with the Community Investment Board at least once every 3 months.

(c) Community development corporation requirements

Any community development corporation, or community development unit within any in-

sured depository institution meets the requirements of this subsection if the corporation or unit provides the same or greater, as determined by the appropriate Federal banking agency, community participation in the activities of such corporation or unit as would be provided by a Community Investment Board under subsection (b) of this section if such corporation or unit were a community development bank.

(d) Adequate dispersal requirement

The appropriate Federal banking agency may approve the establishment of a community development organization under this subtitle only upon finding that the distressed community is not adequately served by an existing community development organization.

(e) Definitions

For purposes of this section—

(1) Community development bank

The term ''community development bank'' means any depository institution (as defined in section 1813(c)(1) of this title).

(2) Community development organization

The term ''community development organization'' means any community development bank, community development corporation, community development unit within any insured depository institution, or community development credit union.

(3) Low- and moderate-income persons

The term ''low- and moderate-income persons'' has the meaning given such term in section 5302(a)(20) of title 42.

(4) Nonprofit organization; small business

The terms ''nonprofit organization'' and ''small business'' have the meanings given to such terms by regulations which the appropriate Federal banking agency shall prescribe for purposes of this section.

(5) Qualified distressed community

The term ''qualified distressed community'' has the meaning given to such term in section 1834a(b) of this title.

(Pub. L. 102–242, title II, § 234, Dec. 19, 1991, 105 Stat. 2315.)

REFERENCES IN TEXT

This subtitle, referred to in subsecs. (a) and (d), is subtitle C (§§ 231–234) of title II of Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2308, known as the Bank Enterprise Act of 1991, which enacted this section and sections 1834 and 1834a of this title, amended section 1817 of this title, and enacted provisions set out as a note under section 1811 of this title. For complete classification of subtitle C to the Code, see section 231 of Pub. L. 102–242, set out as a Short Title of 1991 Amendment note under section 1811 of this title and Tables.

CODIFICATION

Section was enacted as part of the Bank Enterprise Act of 1991, and also as part of the Foreign Bank Supervision Enhancement Act of 1991 and as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1834a, 4713 of this title.

§ 1835. Insured depository institution capital requirements for transfers of small business obligations

(a) Accounting principles

The accounting principles applicable to the transfer of a small business loan or a lease of personal property with recourse contained in reports or statements required to be filed with Federal banking agencies by a qualified insured depository institution shall be consistent with generally accepted accounting principles.

(b) Capital and reserve requirements

With respect to the transfer of a small business loan or lease of personal property with recourse that is a sale under generally accepted accounting principles, each qualified insured depository institution shall—

(1) establish and maintain a reserve equal to an amount sufficient to meet the reasonable estimated liability of the institution under the recourse arrangement; and

(2) include, for purposes of applicable capital standards and other capital measures, only the amount of the retained recourse in the risk-weighted assets of the institution.

(c) Qualified institutions criteria

An insured depository institution is a qualified insured depository institution for purposes of this section if, without regard to the accounting principles or capital requirements referred to in subsections (a) and (b) of this section, the institution is—

(1) well capitalized; or

(2) with the approval, by regulation or order, of the appropriate Federal banking agency, adequately capitalized.

(d) Aggregate amount of recourse

The total outstanding amount of recourse retained by a qualified insured depository institution with respect to transfers of small business loans and leases of personal property under subsections (a) and (b) of this section shall not exceed—

(1) 15 percent of the risk-based capital of the institution; or

(2) such greater amount, as established by the appropriate Federal banking agency by regulation or order.

(e) Institutions that cease to be qualified or exceed aggregate limits

If an insured depository institution ceases to be a qualified insured depository institution or exceeds the limits under subsection (d) of this section, this section shall remain applicable to any transfers of small business loans or leases of personal property that occurred during the time that the institution was qualified and did not exceed such limit.

(f) Prompt corrective action not affected

The capital of an insured depository institution shall be computed without regard to this section in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 1831*o* of this title.

(g) Regulations required

Not later than 180 days after September 23, 1994, each appropriate Federal banking agency

shall promulgate final regulations implementing this section.

(h) Alternative system permitted

(1) In general

At the discretion of the appropriate Federal banking agency, this section shall not apply if the regulations of the agency provide that the aggregate amount of capital and reserves required with respect to the transfer of small business loans and leases of personal property with recourse does not exceed the aggregate amount of capital and reserves that would be required under subsection (b) of this section.

(2) Existing transactions not affected

Notwithstanding paragraph (1), this section shall remain in effect with respect to transfers of small business loans and leases of personal property with recourse by qualified insured depository institutions occurring before the effective date of regulations referred to in paragraph (1).

(i) Definitions

For purposes of this section—

(1) the term ''adequately capitalized'' has the same meaning as in section 1831*o*(b) of this title;

(2) the term ''appropriate Federal banking agency'' has the same meaning as in section 1813 of this title;

(3) the term ''capital standards'' has the same meaning as in section 1831*o*(c) of this title;

(4) the term ''Federal banking agencies'' has the same meaning as in section 1813 of this title;

(5) the term ''insured depository institution'' has the same meaning as in section 1813 of this title;

(6) the term ''other capital measures'' has the meaning as in section 1831*o*(c) of this title;

(7) the term ''recourse'' has the meaning given to such term under generally accepted accounting principles;

(8) the term ''small business'' means a business that meets the criteria for a small business concern established by the Small Business Administration under section 632(a) of title 15; and

(9) the term ''well capitalized'' has the same meaning as in section 1831*o*(b) of this title.

(Pub. L. 103–325, title II, § 208, Sept. 23, 1994, 108 Stat. 2201.)

CODIFICATION

Section was enacted as part of the Small Business Loan Securitization and Secondary Market Enhancement Act of 1994 and as part of the Riegle Community Development and Regulatory Improvement Act of 1994, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4808 of this title.

§ 1835a. Prohibition against deposit production offices

(a) Regulations

The appropriate Federal banking agencies shall prescribe uniform regulations effective June 1, 1997, which prohibit any out-of-State bank from using any authority to engage in interstate branching pursuant to this title,[1] or any amendment made by this title[1] to any other provision of law, primarily for the purpose of deposit production.

(b) Guidelines for meeting credit needs

Regulations issued under subsection (a) of this section shall include guidelines to ensure that interstate branches operated by an out-of-State bank in a host State are reasonably helping to meet the credit needs of the communities which the branches serve.

(c) Limitation on out-of-State loans

(1) Limitation

Regulations issued under subsection (a) of this section shall require that, beginning no earlier than 1 year after establishment or acquisition of an interstate branch or branches in a host State by an out-of-State bank, if the appropriate Federal banking agency for the out-of-State bank determines that the bank's level of lending in the host State relative to the deposits from the host State (as reasonably determinable from available information including the agency's sampling of the bank's loan files during an examination or such data as is otherwise available) is less than half the average of total loans in the host State relative to total deposits from the host State (as determinable from relevant sources) for all banks the home State of which is such State—

(A) the appropriate Federal banking agency for the out-of-State bank shall review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State; and

(B) if the agency determines that the out-of-State bank is not reasonably helping to meet those needs—

(i) the agency may order that an interstate branch or branches of such bank in the host State be closed unless the bank provides reasonable assurances to the satisfaction of the appropriate Federal banking agency that the bank has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank in the host State, and

(ii) the out-of-State bank may not open a new interstate branch in the host State unless the bank provides reasonable assurances to the satisfaction of the appropriate Federal banking agency that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(2) Considerations

In making a determination under paragraph (1)(A), the appropriate Federal banking agency shall consider—

(A) whether the interstate branch or branches of the out-of-State bank were formerly part of a failed or failing depository institution;

(B) whether the interstate branch was acquired under circumstances where there was

[1] See References in Text note below.

a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(C) whether the interstate branch or branches of the out-of-State bank have a higher concentration of commercial or credit card lending, trust services, or other specialized activities;

(D) the ratings received by the out-of-State bank under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.];

(E) economic conditions, including the level of loan demand, within the communities served by the interstate branch or branches of the out-of-State bank; and

(F) the safe and sound operation and condition of the out-of-State bank.

(3) Branch closing procedure

(A) Notice required

Before exercising any authority under paragraph (1)(B)(i), the appropriate Federal banking agency shall issue to the bank a notice of the agency's intention to close an interstate branch or branches and shall schedule a hearing.

(B) Hearing

Section 1818(h) of this title shall apply to any proceeding brought under this paragraph.

(d) Application

This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title[2] or any amendment made by this title[2] to any other provision of law.

(e) Definitions

For the purposes of this section, the following definitions shall apply:

(1) Appropriate Federal banking agency, bank, State, and State bank

The terms ''appropriate Federal banking agency'', ''bank'', ''State'', and ''State bank'' have the same meanings as in section 1813 of this title.

(2) Home State

The term ''home State'' means—

(A) in the case of a national bank, the State in which the main office of the bank is located; and

(B) in the case of a State bank, the State by which the bank is chartered.

(3) Host State

The term ''host State'' means a State in which a bank establishes a branch other than the home State of the bank.

(4) Interstate branch

The term ''interstate branch'' means a branch established pursuant to this title[2] or any amendment made by this title[2] to any other provision of law and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 1841(*o*)(7) of this title).

(5) Out-of-State bank

The term ''out-of-State bank'' means, with respect to any State, a bank the home State of which is another State and, for purposes of this section, includes a foreign bank, the home State of which is another State.

(Pub. L. 103–328, title I, § 109, Sept. 29, 1994, 108 Stat. 2362; Pub. L. 106–102, title I, § 106, Nov. 12, 1999, 113 Stat. 1359.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (d), and (e)(4), is title I of Pub. L. 103–328, Sept. 29, 1994, 108 Stat. 2339, which enacted this section and sections 43, 215a–1, and 1831u of this title, amended sections 30, 36, 215, 215a, 215b, 1462a, 1820, 1828, 1831a, 1831r–1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacted provisions set out as notes under sections 215, 1811, 1828, 3104, 3105, and 3107 of this title and section 1927 of Title 7, and amended provisions set out as a note under section 1811 of this title. For complete classification of this title to the Code, see Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (c)(2)(D), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (e)(4). Pub. L. 106–102 inserted before period at end ''and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 1841(*o*)(7) of this title)''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106–102, set out as a note under section 24 of this title.

CHAPTER 17—BANK HOLDING COMPANIES

Sec.
1841. Definitions.
1842. Acquisition of bank shares or assets.
(a) Prior approval of Board as necessary; exceptions; disposition, time extension; subsequent approval or disposition upon disapproval.
(b) Application for approval; notice to Comptroller of Currency or State authority; views and recommendations; disapproval; hearing; order of Board; nonaction deemed grant of application; procedure in emergencies or probable failures requiring immediate Board action and orders.
(c) Factors for consideration by Board.
(d) Interstate banking.
(e) Insured depository institution.
(f) Repealed.
(g) Mutual bank holding company.
1843. Interests in nonbanking organizations.
(a) Ownership or control of voting shares of any company not a bank; engagement in activities other than banking.
(b) Statement purporting to represent shares of any company except a bank or bank holding company.

[2] See References in Text note below.