

more executive officers of a member bank are partners having either individually or together a majority interest in said partnership, shall be considered within the prohibition of this section”.

Par. (6). Pub. L. 90-44 incorporated reporting requirement of second sentence in provisions designated as par. (6) but limited it to extensions of credit from other banks to the executive officers as exceeded amounts available to such officers from their member banks under pars. (2) to (4) of this section.

Par. (7). Pub. L. 90-44 designated provisions of fourth sentence as par. (7).

Par. (8). Pub. L. 90-44 designated proviso of sixth sentence as par. (8) and identified the violation as one for purposes of section 1818 of this title.

Par. (9). Pub. L. 90-44 added requirement, designated as par. (9), that member banks report all loans made under authority of this section since previous report of condition.

Par. (10). Pub. L. 90-44 designated provisions of fifth sentence as par. (10) and substituted general authorization for definition of terms for former specific authorization for definition of “executive officer” and for determination what shall be deemed to be a borrowing, indebtedness, loan, or extension of credit.

Pub. L. 90-44 struck out former sixth sentence, less proviso, which provided for removal from office in manner prescribed in former section 77 of this title of any executive officer of member bank accepting a loan or extension of credit in violation of this section.

1939—Act June 20, 1939, substituted “June 16, 1939,” for “from such date”, in first sentence.

1938—Par. (1). Act Apr. 25, 1938, substituted “six” for “five” in first sentence.

1935—Act Aug. 23, 1935, added last two provisos.

Act June 14, 1935, struck out a proviso and inserted in lieu thereof first proviso.

EFFECTIVE DATE OF 1978 AMENDMENT

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

§ 375b. Extensions of credit to executive officers, directors, and principal shareholders of member banks

(1) In general

No member bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), (5), and (6).

(2) Preferential terms prohibited

(A) In general

A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

(i) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank;

(ii) does not involve more than the normal risk of repayment or present other unfavorable features; and

(iii) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(B) Exception

Nothing in this paragraph shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) that is widely available to employees of the member bank; and

(ii) that does not give preference to any officer, director, or principal shareholder of the member bank, or to any related interest of such person, over other employees of the member bank.

(3) Prior approval required

A member bank may extend credit to a person described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by regulation of the appropriate Federal banking agency (as defined in section 1813 of this title) only if—

(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

(B) the interested party has abstained from participating, directly or indirectly, in the deliberations or voting on the extension of credit.

(4) Aggregate limit on extensions of credit to any executive officer, director, or principal shareholder

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 84 of this title. For purposes of this paragraph, section 84 of this title shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

(5) Aggregate limit on extensions of credit to all executive officers, directors, and principal shareholders

(A) In general

A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

(B) More stringent limit authorized

The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

(C) Board may make exceptions for certain banks

The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than \$100,000,000 in deposits if the

Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.

(6) Overdrafts by executive officers and directors prohibited

(A) In general

If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

(B) Exceptions

Subparagraph (A) does not prohibit a member bank from paying funds in accordance with—

- (i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; or
- (ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

(7) Prohibition on knowingly receiving unauthorized extension of credit

No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this section.

(8) Executive officer, director, or principal shareholder of certain affiliates treated as executive officer, director, or principal shareholder of member bank

(A) In general

For purposes of this section, any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.

(B) Exception

The Board may, by regulation, make exceptions to subparagraph (A) for any executive officer or director of a subsidiary of a company that controls the member bank if—

- (i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and
- (ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company).

(9) Definitions

For purposes of this section:

(A) Company

(i) In general

Except as provided in clause (ii), the term "company" means any corporation, partner-

ship, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

(ii) Exceptions

The term "company" does not include—

- (I) an insured depository institution (as defined in section 1813 of this title); or
- (II) a corporation the majority of the shares of which are owned by the United States or by any State.

(B) Control

A person controls a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons—

- (i) owns, controls, or has the power to vote 25 percent or more of any class of the company's voting securities;
- (ii) controls in any manner the election of a majority of the company's directors; or
- (iii) has the power to exercise a controlling influence over the company's management or policies.

(C) Executive officer

A person is an "executive officer" of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

(D) Extension of credit

(i) In general

A member bank extends credit to a person by—

- (I) making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which the person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank; or
- (II) having credit exposure to the person arising from a derivative transaction (as defined in section 84(b) of this title), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.

(ii) Exceptions

The Board may, by regulation, make exceptions to clause (i) for transactions that the Board determines pose minimal risk.

(E) Member bank

The term "member bank" includes any subsidiary of a member bank.

(F) Principal shareholder

The term "principal shareholder"—

- (i) means any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company; and
- (ii) does not include a company of which a member bank is a subsidiary.

(G) Related interest

A "related interest" of a person is—

- (i) any company controlled by that person; and
- (ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(H) Subsidiary

The term “subsidiary” has the same meaning as in section 1841 of this title.

(10) Board’s rulemaking authority

The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this section.

(Dec. 23, 1913, ch. 6, §22(h), as added Pub. L. 95-630, title I, §104, Nov. 10, 1978, 92 Stat. 3644; amended Pub. L. 97-320, title IV, §§410(e), 422, Oct. 15, 1982, 96 Stat. 1520, 1522; Pub. L. 102-242, title III, §306(a)–(h), Dec. 19, 1991, 105 Stat. 2355, 2357–2359; Pub. L. 102-550, title IX, §955, title XVI, §1605(a)(10), Oct. 28, 1992, 106 Stat. 3895, 4086; Pub. L. 103-325, title III, §334(b), Sept. 23, 1994, 108 Stat. 2233; Pub. L. 104-208, div. A, title II, §2211, Sept. 30, 1996, 110 Stat. 3009–410; Pub. L. 111-203, title VI, §614(a), July 21, 2010, 124 Stat. 1614.)

PRIOR PROVISIONS

A prior section 22(h) of act Dec. 23, 1913, ch. 6, as added June 19, 1934, ch. 653, §3, 48 Stat. 1107, was classified to section 596 of this title, prior to repeal by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948.

AMENDMENTS

2010—Subsec. (9)(D)(i). Pub. L. 111-203 substituted “extends credit to a person by—” for “extends credit by making”, inserted “(I) making” before “or renewing”, substituted “which the person” for “which a person” and “the bank; or” for “the bank.”, and added subcl. (II).

1996—Par. (2)(A). Pub. L. 104-208, §2211(a)(1), (2), designated existing provisions as subpar. (A), inserted heading, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and adjusted margins.

Par. (2)(B). Pub. L. 104-208, §2211(a)(3), added subpar. (B). Former subpar. (B) redesignated cl. (ii) of subpar. (A).

Par. (2)(C). Pub. L. 104-208, §2211(a)(1), redesignated subpar. (C) as cl. (iii) of subpar. (A).

Par. (8)(B). Pub. L. 104-208, §2211(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank.”

1994—Par. (8). Pub. L. 103-325 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1992—Par. (6)(B)(i). Pub. L. 102-550, §1605(a)(10), substituted “or” for “and” at end.

Par. (9)(D). Pub. L. 102-550, §955(a), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Par. (9)(F). Pub. L. 102-550, §955(b), designated portion of existing provisions as cl. (i), realigned margin, substituted “; and” for period at end, and added cl. (ii).

1991—Pub. L. 102-242, §306(a), amended section generally, substituting provisions relating to extensions of credit to executive officers, directors, and principal

shareholders of member banks for provisions relating to prohibitions respecting loans and extensions of credit to executive officers and directors of banks, political or campaign committees, etc.

Par. (1). Pub. L. 102-242, §306(d)(2), inserted “(5),” after “(4).”

Par. (2)(C). Pub. L. 102-242, §306(b), added subpar. (C).

Par. (4). Pub. L. 102-242, §306(c), inserted “, director,” after “executive officer” in heading and text.

Par. (5). Pub. L. 102-242, §306(d)(1), added par. (5).

Par. (7). Pub. L. 102-242, §306(e), added par. (7).

Par. (8). Pub. L. 102-242, §306(f), struck out “bank holding” before “company of which the member”.

Par. (9)(E). Pub. L. 102-242, §306(g), added subpar. (E).

Par. (9)(F). Pub. L. 102-242, §306(h), struck out last sentence of subpar. (F) which read as follows: “For purposes of paragraph (4), if a member bank has its main banking office in a city, town, or village with a population of less than 30,000, the preceding sentence shall apply with ‘18 percent’ substituted for ‘10 percent’.”

1982—Par. (2). Pub. L. 97-320, §422, substituted “an amount prescribed in a regulation of the appropriate Federal banking agency” for “\$25,000”.

Par. (6)(C) to (F). Pub. L. 97-320, §410(e), redesignated subpars. (D) to (G) as (C) to (F), respectively. Former subpar. (C), relating to definition of term “extension of credit”, was struck out.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title VI, §614(b), July 21, 2010, 124 Stat. 1614, provided that: “The amendments made by this section [amending this section] shall take effect 1 year after the transfer date.”

[For definition of “transfer date” as used in section 614(b) of Pub. L. 111-203, set out above, see section 5301 of this title.]

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1605(a)(10) 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, see section 1609 of Pub. L. 102-550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-242, title III, §306(l), Dec. 19, 1991, 105 Stat. 2360, provided that: “The amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title] shall become effective upon the earlier of—

“(1) the date on which final regulations under subsection (m)(1) [set out below] become effective [May 18, 1992, see 57 F.R. 22417]; or

“(2) 150 days after the date of enactment of this Act [Dec. 19, 1991].”

EFFECTIVE DATE

Pub. L. 95-630, title XXI, §2101, Nov. 10, 1978, 92 Stat. 3741, provided that: “Except as otherwise provided herein, this Act [see Short Title of 1978 Amendment note set out under section 226 of this title] shall take effect upon the expiration of one hundred and twenty days after the date of its enactment [Nov. 10, 1978].”

REGULATIONS

Pub. L. 102-242, title III, §306(m), Dec. 19, 1991, 105 Stat. 2360, provided that:

“(1) IN GENERAL.—The Board of Governors of the Federal Reserve System shall, not later than 120 days after the date of enactment of this Act [Dec. 19, 1991], promulgate final regulations to implement the amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title], other than the amendments made by subsections (i) and (k) [amending sections 1468 and 1828 of this title].

“(2) LIMITING EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS.—The Federal Deposit Insurance Corporation and Director of the Office of Thrift Supervision shall each, not later than 120 days after the date of enact-

ment of this Act, promulgate final regulations prescribing the maximum amount that a nonmember insured bank or insured savings association (as the case may be) may lend under section 22(g)(4) of the Federal Reserve Act [12 U.S.C. 375a(4)], as made applicable to those institutions by subsections (k) and (i), respectively."

EXISTING TRANSACTIONS NOT AFFECTED BY 1991
AMENDMENTS

Pub. L. 102-242, title III, §306(n), Dec. 19, 1991, 105 Stat. 2360, provided that: "The amendments made by this section [amending this section and sections 1468, 1828, and 1972 of this title] do not affect the validity of any extension of credit or other transaction lawfully entered into on or before the effective date of those amendments [see Effective Date of 1991 Amendment note above]."

REPORTING OF CREDIT BY EXECUTIVE OFFICERS AND
DIRECTORS

Pub. L. 102-242, title III, §306(o), Dec. 19, 1991, 105 Stat. 2360, provided that: "An executive officer or director of an insured depository institution, a bank holding company, or a savings and loan holding company, the shares of which are not publicly traded, shall report annually to the board of directors of the institution or holding company the outstanding amount of any credit that was extended to such executive officer or director and that is secured by shares of the institution or holding company."

§ 376. Rate of interest paid to directors, etc.

No member bank shall pay to any director, officer, attorney, or employee a greater rate of interest on the deposits of such director, officer, attorney, or employee than that paid to other depositors on similar deposits with such member bank.

(Dec. 23, 1913, ch. 6, §22(e), as added Sept. 26, 1918, ch. 177, §5, 40 Stat. 971.)

**§ 377. Repealed. Pub. L. 106-102, title I, § 101(a),
Nov. 12, 1999, 113 Stat. 1341**

Section, acts June 16, 1933, ch. 89, §20, 48 Stat. 188; Aug. 23, 1935, ch. 614, title II, §203(a), title III, §302, 49 Stat. 704, 707, prohibited member banks from affiliating with organizations dealing in securities and provided for penalties.

EFFECTIVE DATE OF REPEAL

Repeal 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.

**§ 378. Dealers in securities engaging in banking
business; individuals or associations engag-
ing in banking business; examinations and
reports; penalties**

(a) After the expiration of one year after June 16, 1933, it shall be unlawful—

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling, or distributing, at wholesale or retail, or through syndicate participation, stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor: *Provided*, That the pro-

visions of this paragraph shall not prohibit national banks or State banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing, and selling investment securities, or issuing securities, to the extent permitted to national banking associations by the provisions of section 24 of this title: *Provided further*, That nothing in this paragraph shall be construed as affecting in any way such right as any bank, banking association, savings bank, trust company, or other banking institution, may otherwise possess to sell, without recourse or agreement to repurchase, obligations evidencing loans on real estate; or

(2) For any person, firm, corporation, association, business trust, or other similar organization to engage, to any extent whatever with others than his or its officers, agents or employees, in the business of receiving deposits subject to check or to repayment upon presentation of a pass book, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization (A) shall be incorporated under, and authorized to engage in such business by, the laws of the United States or of any State, Territory, or District, and subjected, by the laws of the United States, or of the State, Territory, or District wherein located, to examination and regulation, or (B) shall be permitted by the United States, any State, territory, or district to engage in such business and shall be subjected by the laws of the United States, or such State, territory, or district to examination and regulations or, (C) shall submit to periodic examination by the banking authority of the State, Territory, or District where such business is carried on and shall make and publish periodic reports of its condition, exhibiting in detail its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and under the same conditions as required by the law of such State, Territory, or District in the case of incorporated banking institutions engaged in such business in the same locality.

(b) Whoever shall willfully violate any of the provisions of this section shall upon conviction be fined not more than \$5,000 or imprisoned not more than five years, or both, and any officer, director, employee, or agent of any person, firm, corporation, association, business trust, or other similar organization who knowingly participates in any such violation shall be punished by a like fine or imprisonment or both.

(June 16, 1933, ch. 89, §21, 48 Stat. 189; Aug. 23, 1935, ch. 614, title III, §303, 49 Stat. 707; Pub. L. 86-230, §23, Sept. 8, 1959, 73 Stat. 466; Pub. L. 90-448, title VIII, §804(d), Aug. 1, 1968, 82 Stat. 543; Pub. L. 95-369, §12, Sept. 17, 1978, 92 Stat. 624.)

AMENDMENTS

1978—Subsec. (a)(2)(B). Pub. L. 95-369 inserted reference to permission by the United States to engage in such business and subjection by the laws of the United States to examination and regulation.