

[For definitions of terms used in section 603(a) of Pub. L. 111-203, set out above, see section 5301 of this title.]

#### DEPOSIT OF FUNDS INTO DEPOSIT INSURANCE FUND

Pub. L. 109-173, §8(a)(4), Feb. 15, 2006, 119 Stat. 3610, provided in part that: “any funds resulting from the application of such paragraph (2) [of subsec. (d) of this section] prior to its repeal [see 2006 Amendment note above] shall be deposited into the general fund of the Deposit Insurance Fund”.

#### 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).”

#### DEFINITION OF “COMMERCIAL FIRM”

Pub. L. 111-203, title VI, §602, July 21, 2010, 124 Stat. 1596, provided that: “For purposes of this title [see Short Title note set out under section 1811 of this title], a company is a ‘commercial firm’ if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)]) and, if applicable, from the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.”

[For definitions of terms used in section 602 of Pub. L. 111-203, set out above, see section 5301 of this title.]

### § 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 Deposit 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; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §8(a)(7), Feb. 15, 2006, 119 Stat. 3611.)

#### 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

2006—Par. (5). Pub. L. 109-173 substituted “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”.

Pub. L. 109-171 repealed Pub. L. 104-208, §2704(d)(14)(F). See 1996 Amendment note below.

1996—Par. (5). Pub. L. 104-208, §2704(d)(14)(F), which directed substitution of “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 2006 AMENDMENT

Amendment by Pub. L. 109-173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109-173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 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, formerly set out as a note under section 1821 of this title.

### § 1817. Assessments

#### (a) Reports of condition; access to reports

(1) Each insured State nonmember 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 Federal Housing Finance Agency, 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, to the Federal Housing Finance Agency, to any 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 consultation with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, as appropriate, may deem advisable for insurance purposes.

(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the discretion of the agency, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

(ii) any officer, director, or receiver of such depository institution or entity; and

(iii) any other person that the Federal banking agency determines to be appropriate.

(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. 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. Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c). 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 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)(D) of this title) shall be reported separately.

(7) The Board of Directors, after consultation with the Comptroller of the Currency 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 1831o 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.

(11) STREAMLINING REPORTS OF CONDITION.—

(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on October 13, 2006, and before the end of each 5-year period thereafter, each Federal banking agency shall, in conjunction with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in conjunction with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or

schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.

**(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 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 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 the Deposit Insurance Fund.

**(E) Information concerning risk of loss and economic conditions**

**(i) Sources of information**

For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, including reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 18317 of this title), the Secretary of the Treasury, the Commodity Futures Trading Commis-

sion, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic or business analysts.

**(ii) Consultation with Federal banking agencies**

**(I) In general**

Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

**(II) Treatment on aggregate basis**

In the case of insured depository institutions that are well capitalized (as defined in section 18310 of this title) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

**(iii) Rule of construction**

No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation, except as provided in subsection (a)(2)(B).

**(F) Modifications to the risk-based assessment system allowed only after notice and comment**

In revising or modifying the risk-based assessment system at any time after February 8, 2006, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.

**(2) Setting assessments**

**(A) In general**

The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).<sup>1</sup>

**(B) Factors to be considered**

In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to paragraph

<sup>1</sup> See References in Text note below.

(1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.

**(D)<sup>2</sup> Notice of assessments**

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

**(E) 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) Designated reserve ratio**

**(A) Establishment**

**(i) In general**

Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

**(ii) Rulemaking requirement**

Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

**(B) Minimum reserve ratio**

The reserve ratio designated by the Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).<sup>2</sup>

**(C) Factors**

In designating a reserve ratio for any year, the Board of Directors shall—

(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

**(D) Publication of proposed change in ratio**

In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.

**(E) DIF restoration plans**

**(i) In general**

Whenever—

(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

**(ii) Requirements of restoration plan**

A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

**(iii) Restriction on assessment credits**

As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

**(iv) Limitation on restriction**

Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

(I) the amount of the assessment; or

(II) the amount equal to 3 basis points of the institution's assessment base.

**(v) Transparency**

Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

<sup>2</sup> So in original. Par. (2) does not contain a subpar. (C).

**(4) Depository institution required to maintain assessment-related records**

Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

(A) the end of the 3-year period beginning on the due date of the assessment; or

(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.

**(5) 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 is necessary—

(A) 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;

(B) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from insured depository institutions under section 1824(d) of this title; or

(C) for any other purpose that the Corporation may deem necessary.

**(6) 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 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 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 initial assessment 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 Cor-

poration 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, dividends, and credits**

**(1) Refunds of 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 assessments until such credit is exhausted.

**(2) Dividends from excess amounts in Deposit Insurance Fund**

**(A) Reserve ratio in excess of 1.5 percent of estimated insured deposits**

If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

**(B) Limitation**

The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).

**(C) Notice and opportunity for comment**

The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph<sup>3</sup>

**(3) One-time credit based on total assessment base at year-end 1996**

**(A) In general**

Before the end of the 270-day period beginning on February 8, 2006, the Board of Direc-

tors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

**(B) Credit limit**

The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

**(C) Eligible insured depository institution defined**

For purposes of this paragraph, the term “eligible insured depository institution” means any insured depository institution that—

(i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

(ii) is a successor to any insured depository institution described in clause (i).

**(D) Application of credits**

**(i) In general**

Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

**(ii) Temporary restriction on use of credits**

The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

**(iii) Regulations**

The regulations prescribed under subparagraph (A) shall establish the qualifications and procedures governing the application of assessment credits pursuant to clause (i).

**(E) Limitation on amount of credit for certain depository institutions**

In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 1831o of this title) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the as-

<sup>3</sup> So in original. Probably should be followed by a period.

assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

**(F) Successor defined**

The Corporation shall define the term “successor” for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

**(4) Administrative review**

**(A) In general**

The regulations prescribed under paragraphs (2) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

**(B) Administrative review**

Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.

**(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) Assessment actions**

**(1) In general**

The Corporation, 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 depository institution.

**(2) Statute of limitations**

The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

(E) Any action for the underpaid or overpaid amount of any assessment that became due before January 1, 2007, shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.

**(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 the standard maximum deposit insurance amount (as determined under section 1821(a)(1) of this title) 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 the standard maximum deposit insurance amount (as determined under section 1821(a)(1) of this title) 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—

(i) 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; or

(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.

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<sup>4</sup> 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.<sup>4</sup>

(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

<sup>4</sup>So in original. The word "bank" probably should be "depository institution".

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<sup>4</sup> 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 description 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,<sup>4</sup> 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) either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank<sup>4</sup> or prejudice the interests of the depositors of the bank;<sup>4</sup>

(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;<sup>4</sup>

(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 Deposit 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.

(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 as-

essed 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)<sup>1</sup> 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 equal to such association’s share of the secondary reserve as determined under section 404(e)<sup>1</sup> 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)<sup>1</sup> 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)<sup>1</sup> 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)<sup>1</sup> of the National Housing Act (as in effect before August 9, 1989) to a calendar year basis.

**(n) Collections on behalf of the Comptroller of the Currency**

When requested by the Comptroller of the Currency, the Corporation shall collect on behalf of the Comptroller assessments on Federal savings associations levied by the Comptroller 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 Comptroller shall be in addition to any amounts assessed by the 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; Pub. L. 108–386, §8(a)(2), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 109–171, title II, §§2102(b), 2104(a), (b), (d), 2105(a), 2106, 2107(a), 2108, Feb. 8, 2006, 120 Stat. 9, 12–16, 19; Pub. L. 109–173, §§2(b), 3(a)(1)–(5), 8(a)(8), (9), Feb. 15, 2006, 119 Stat. 3602, 3605, 3611; Pub. L. 109–351, title VI, §604, title VII, §§705, 707(a), Oct. 13, 2006, 120 Stat. 1980, 1987; Pub. L. 111–22, div. A, title II, §204(b), May 20, 2009, 123 Stat. 1649; Pub. L. 111–203, title III, §§331(a), 332–334(a), 363(2), title IX, §939(a)(1), July 21, 2010, 124 Stat. 1538, 1539, 1550, 1885.)

#### AMENDMENT OF SUBSECTION (b)(1)(E)(i)

*Pub. L. 111–203, title IX, §939(a)(1), (g), July 21, 2010, 124 Stat. 1885, 1887, provided that, effective 2 years after July 21, 2010, subsection (b)(1)(E)(i) of this section is amended by substituting “private economic, credit,” for “credit rating entities, and other private economic”.*

#### REFERENCES IN TEXT

Subparagraph (D), referred to in subsec. (b)(2)(A), was repealed by Pub. L. 111–203, §331(a)(1). See 2010 Amendment note below.

The Bank Enterprise Act of 1991, referred to in subsec. (b)(2)(E), 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.

The National Bank Act, referred to in subsec. (h), is act June 3, 1864, ch. 106, 13 Stat. 99, 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, 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, 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, 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

2010—Subsec. (a)(2)(A). Pub. L. 111–203, §363(2)(A)(i)(I), in the first sentence, struck out “the Director of the Office of Thrift Supervision,” before “the Federal” and substituted “Finance Agency” for “Finance Board” and, in the second sentence, substituted “to the Federal Housing” for “the Director of the Office of Thrift Supervision, the Federal Housing”, inserted “to” before “any Federal home”, and substituted “Finance Agency” for “Finance Board”.

Subsec. (a)(2)(B). Pub. L. 111–203, §363(2)(A)(i)(II), substituted “the Comptroller of the Currency and the Board of Governors of the Federal Reserve System,” for “the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision,”.

Pub. L. 111–203, §333(a), substituted “consultation” for “agreement”.

Subsec. (a)(3). Pub. L. 111–203, §363(2)(A)(ii), which directed substitution of “Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System.” for “Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, and the Director of the Office of Thrift Supervision.” in the first sentence, was executed by making the substitution for “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.”, to reflect the probable intent of Congress.

Subsec. (a)(6). Pub. L. 111–203, §363(2)(A)(iii), substituted “section 1834(a)(3)(D)” for “section 1834(a)(3)(C)”.

Subsec. (a)(7). Pub. L. 111–203, §363(2)(A)(iv), struck out “, the Director of the Office of Thrift Supervision,” before “and the Board”.

Subsec. (b)(1)(E)(i). Pub. L. 111–203, §333(b)(1), substituted “including reports” for “such as reports”.

Subsec. (b)(1)(E)(iii). Pub. L. 111–203, §333(b)(2), which directed substitution of “Corporation, except as provided in subsection (a)(2)(B)” for “Corporation”, was executed by making the substitution for “Corporation” the second time appearing, to reflect the probable intent of Congress.

Subsec. (b)(2)(C), (D). Pub. L. 111–203, §331(a), redesignated subpar. (C) as (D) and struck out former subpar. (D). Prior to amendment, text of subpar. (D) read as follows: “No insured depository institution shall be barred from the lowest-risk category solely because of size.”

Subsec. (b)(3)(B). Pub. L. 111–203, §334(a), amended subpar. (B) generally. Prior to amendment, text read as follows: “The reserve ratio designated by the Board of Directors for any year—

“(i) may not exceed 1.5 percent of estimated insured deposits; and

“(ii) may not be less than 1.15 percent of estimated insured deposits.”

Subsec. (e)(2)(B). Pub. L. 111–203, §332(1)(A), amended subpar. (B) generally. Prior to amendment, text read as follows: “If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund equals or exceeds 1.35 percent of estimated insured deposits and is not more than 1.5 percent of such deposits, the Corporation shall declare the amount in the Fund that is equal to 50 percent of the amount in excess of the amount required to maintain the reserve ratio at 1.35 percent of

the estimated insured deposits as dividends to be paid to insured depository institutions.”

Subsec. (e)(2)(C) to (G). Pub. L. 111–203, §332(1)(B), (C), amended subpar. (C) generally and struck out subpars. (D) to (G). Prior to amendment, subpars. (C) to (G) related to basis for distribution of dividends, notice and opportunity for comment, suspension or limitation of dividends by Board upon making certain determination, considerations in such determination, and annual review of such determination, respectively.

Subsec. (e)(4)(A). Pub. L. 111–203, §332(2), substituted “paragraphs (2) and” for “paragraphs (2)(D) and”.

Subsec. (n). Pub. L. 111–203, §363(2)(B), in heading, substituted “Comptroller of the Currency” for “Director of the Office of Thrift Supervision” and, in text, substituted “the Comptroller of the Currency” for “the Director of the Office of Thrift Supervision”, “the Comptroller assessments on Federal savings associations levied by the Comptroller” for “the Director assessments on savings associations levied by the Director”, and “assessments by the Comptroller” for “assessments by the Director” and struck out “, the Financing Corporation, and the Resolution Funding Corporation” before period at end.

2009—Subsec. (b)(3)(E)(ii). Pub. L. 111–22 substituted “8-year period” for “5-year period”.

2006—Subsec. (a)(2)(C). Pub. L. 109–351, §707(a), added subpar. (C).

Subsec. (a)(3). Pub. L. 109–173, §3(a)(1), substituted “Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c).” for “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.”

Subsec. (a)(11). Pub. L. 109–351, §604, added par. (11).

Subsec. (b)(1)(B)(ii). Pub. L. 109–173, §3(a)(2), struck out “semiannual” before “assessment”.

Subsec. (b)(1)(C). Pub. L. 109–173, §3(a)(2), struck out “semiannual” before “assessment based” in introductory provisions.

Subsec. (b)(1)(C)(i), (iii). Pub. L. 109–173, §8(a)(8)(A), substituted “Deposit Insurance Fund” for “deposit insurance fund”.

Subsec. (b)(1)(D). Pub. L. 109–173, §8(a)(8)(B), substituted “the Deposit Insurance Fund” for “each deposit insurance fund”.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(i). See 1996 Amendment note below.

Subsec. (b)(1)(E), (F). Pub. L. 109–171, §2106, added subpars. (E) and (F).

Subsec. (b)(2)(A). Pub. L. 109–171, §2104(a)(1), added subpar. (A) and struck out heading and text of former subpar. (A). Text related to semiannual assessments for insured depository institutions to achieve or maintain the reserve ratio of each deposit insurance fund at the designated reserve ratio, the factors to be considered by the Board of Directors, and limitations on the assessment amount unless the insured depository institution exhibited financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory or was not well capitalized.

Subsec. (b)(2)(A)(i)(I), (iii), (iv). Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(ii)–(iv). See 1996 Amendment note below.

Subsec. (b)(2)(B). Pub. L. 109–171, §2104(a)(1), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: “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.”

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii). See 1996 Amendment note below.

Subsec. (b)(2)(C). Pub. L. 109–173, §3(a)(3)(B), struck out “semiannual” before “assessment”.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii), (14)(G)(v). See 1996 Amendment note below.

Subsec. (b)(2)(D). Pub. L. 109–171, §2104(a)(2), added subpar. (D).

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii), (14)(G)(vi). See 1996 Amendment note below.

Subsec. (b)(2)(E) to (H). Pub. L. 109–173, §3(a)(3)(A), (C), redesignated subpar. (H) as (E) and struck out former subpars. (E) to (G), which related to minimum assessments, the transition rule for the Savings Association Insurance Fund, and a special rule until insurance funds achieved the designated reserve ratio, respectively.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(6)(B)(iii). See 1996 Amendment notes below.

Subsec. (b)(3). Pub. L. 109–171, §2105(a), amended par. (3) generally. Prior to amendment, par. (3) related to a special rule for recapitalizing undercapitalized funds.

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(vii). See 1996 Amendment notes below.

Subsec. (b)(3)(E). Pub. L. 109–171, §2108, added subpar. (E) to par. (3), as amended by Pub. L. 109–171, §2105(a). See note above.

Subsec. (b)(4). Pub. L. 109–173, §3(a)(4), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: “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.”

Subsec. (b)(5). Pub. L. 109–173, §8(a)(8)(C), substituted “any such assessment is necessary” for “any such assessment” in introductory provisions, struck out “(A) is necessary—” immediately following introductory provisions, redesignated cls. (i) to (iii) of former subpar. (A) as subpars. (A) to (C), respectively, and realigned margins, substituted “insured depository institutions” for “Bank Insurance Fund members” in subpar. (A), inserted “that” before “the Corporation” and substituted period for “; and” at end of subpar. (C), and struck out former subpar. (B) which read: “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.”

Pub. L. 109–173, §3(a)(4), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 109–171, §2104(b), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: “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.”

Subsec. (b)(6). Pub. L. 109–173, §3(a)(4), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Pub. L. 109–171, §2102(b), repealed Pub. L. 104–208, §2704(d)(14)(G)(viii). See 1996 Amendment note below.

Subsec. (b)(7). Pub. L. 109–173, §3(a)(4), redesignated par. (7) as (6).

Subsec. (c)(1)(A), (2)(A). Pub. L. 109–173, §3(a)(5)(A), (B), struck out “semiannual” before “assessment”.

Subsec. (c)(3). Pub. L. 109–173, §3(a)(5)(C), substituted “initial assessment period” for “semiannual period”.

Subsec. (e). Pub. L. 109–171, §2107(a), amended heading and text of subsec. (e) generally. Prior to amendment,



text related to refunds of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation and refunds in the event of a balance in the insurance fund in excess of the designated reserve.

Subsec. (g). Pub. L. 109-171, §2104(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) provided that the Corporation was entitled to recover, by suit, any unpaid assessment lawfully payable to it by any insured depository institution, except that no proceeding could be brought after 5 years after the right accrued for which the claim was made unless fraudulent certified statements had been made by the depository institution, with special rules with respect to a cause of action which had expired within one year from Sept. 21, 1950, and with respect to assessments for any year prior to 1945.

Subsec. (i)(1), (3). Pub. L. 109-173, §2(b), substituted “the standard maximum deposit insurance amount (as determined under section 1821(a)(1) of this title)” for “\$100,000”.

Subsec. (j)(1)(D). Pub. L. 109-351, §705(1), substituted “is needed—” for “is needed” and “title 31; or” for “title 31.”, inserted cl. (i) designation before “to investigate”, and added cl. (ii).

Subsec. (j)(7)(C). Pub. L. 109-351, §705(2), substituted “either the financial condition of any acquiring person or the future prospects of the institution” for “the financial condition of any acquiring person”.

Subsec. (j)(7)(F). Pub. L. 109-173, §8(a)(9), substituted “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”.

Subsecs. (l) to (n). Pub. L. 109-171, §2102(b), repealed Pub. L. 104-208, §2704(d)(6)(B)(i), (ii). See 1996 Amendment note below.

2004—Subsec. (a)(1). Pub. L. 108-386 struck out “(except a District bank)” after “State nonmember bank” in first sentence.

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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 repealed by Pub. L. 109-171. 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 repealed by Pub. L. 109-171. 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 repealed by Pub. L. 109-171. 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 repealed by Pub. L. 109-171. 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 repealed by Pub. L. 109-171. 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 repealed by Pub. L. 109-171. 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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (b)(3). Pub. L. 104-208, §2704(d)(14)(G)(vii)(I), which directed substitution of “fund” for “funds” in heading, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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 1831o 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,  $\frac{1}{2}$  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 in-

formation 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 “33½”, 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 declaration” 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 “33½” 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 2010 AMENDMENT

Amendment by sections 331(a) and 332 to 334(a) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 363(2) of Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L.

111-203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 939(a)(1) of Pub. L. 111-203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111-203, set out as a note under section 24a of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 2(b) of Pub. L. 109-173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109-173, set out as a note under section 1785 of this title.

Pub. L. 109-173, §3(b), Feb. 15, 2006, 119 Stat. 3606, provided that: "This section [amending this section and sections 1818, 1823, and 1834 of this title] and the amendments made by this section shall take effect on the date that the final regulations required under section 2109(a)(5) of the Federal Deposit Insurance Reform Act of 2005 [Pub. L. 109-171, set out as a Regulations note below] take effect [Jan. 1, 2007, see 71 F.R. 69282]."

Amendment by section 8(a)(8), (9) of Pub. L. 109-173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109-173, set out as a note under section 1813 of this title.

Amendment by section 2102(b) of Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

Pub. L. 109-171, title II, §2104(e), Feb. 8, 2006, 120 Stat. 14, provided that: "This section [amending this section and section 1828 of this title] and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(5) [probably means section 2109(a)(5) of Pub. L. 109-171, set out as a Regulations note below] take effect [Jan. 1, 2007, see 71 F.R. 69323]."

Pub. L. 109-171, title II, §2105(b), Feb. 8, 2006, 120 Stat. 15, provided that: "This section [amending this section] and the amendments made by this section shall take effect on the date that the final regulations required under section 9(a)(1) [probably means section 2109(a)(1) of Pub. L. 109-171, set out as a Regulations note below] take effect [Jan. 1, 2007, see 71 F.R. 69323]."

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108-386, set out as notes under section 321 of this title.

#### 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, formerly 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

Pub. L. 111-203, title III, §331(b), July 21, 2010, 124 Stat. 1538, provided that: "The Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term 'assessment base' with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

"(1) the average consolidated total assets of the insured depository institution during the assessment period; minus

"(2) the sum of—

"(A) the average tangible equity of the insured depository institution during the assessment period; and

"(B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in section 5136 of the Revised Statutes (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker's bank."

[For definitions of terms used in section 331(b) of Pub. L. 111-203, set out above, see section 5301 of this title.]

Pub. L. 109-171, title II, §2109, Feb. 8, 2006, 120 Stat. 20, provided that:

"(a) IN GENERAL.—Not later than 270 days after the date of the enactment of this Act [Feb. 8, 2006], the Board of Directors of the Federal Deposit Insurance Corporation shall prescribe final regulations, after notice and opportunity for comment—

"(1) designating the reserve ratio for the Deposit Insurance Fund in accordance with section 7(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(3)] (as amended by section 2105 of this subtitle);

"(2) implementing increases in deposit insurance coverage in accordance with the amendments made by section 2103 of this subtitle [amending 12 U.S.C. 1821];

"(3) implementing the dividend requirement under section 7(e)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1817(e)(2)] (as amended by section 2107 of this subtitle);

"(4) implementing the 1-time assessment credit to certain insured depository institutions in accordance with section 7(e)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1817(e)(3)], as amended by section 2107 of this subtitle, including the qualifications and procedures under which the Corporation would apply assessment credits; and

"(5) providing for assessments under section 7(b) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)], as amended by this subtitle.

"(b) TRANSITION PROVISIONS.—

"(1) CONTINUATION OF EXISTING ASSESSMENT REGULATIONS.—No provision of this subtitle [subtitle B (§§2101-2109) of title II of Pub. L. 109-171, see Short Title of 2006 Amendment note set out under section 1811 of this title] or any amendment made by this subtitle shall be construed as affecting the authority of the Corporation to set or collect deposit insurance assessments pursuant to any regulations in effect before the effective date of the final regulations prescribed under subsection (a).

"(2) TREATMENT OF DIF MEMBERS UNDER EXISTING REGULATIONS.—As of the date of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to section 2102 [section 2102 of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title], the assessment regulations in effect immediately before the date of the enactment of this Act [Feb. 8, 2006] shall continue to apply to all members of the Deposit Insurance



Fund, until such regulations are modified by the Corporation, notwithstanding that such regulations may refer to ‘Bank Insurance Fund members’ or ‘Savings Association Insurance Fund members.’”

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.”

#### TRANSITION RESERVE RATIO REQUIREMENTS TO REFLECT NEW ASSESSMENT BASE

Pub. L. 111-203, title III, §334(c)–(e), July 21, 2010, 124 Stat. 1539, provided that:

“(c) For a period of not less than 5 years after the date of the enactment of this title [July 21, 2010], the Federal Deposit Insurance Corporation shall make available to the public the reserve ratio and the designated reserve ratio using both estimated insured deposits and the assessment base under [former] section 7(b)(2)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(2) does not contain a subpar. (C)].

“(d) RESERVE RATIO.—Notwithstanding the timing requirements of section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act [12 U.S.C. 1817(b)(3)(E)(ii)], the Corporation shall take such steps as may be necessary for the reserve ratio of the Deposit Insurance Fund to reach 1.35 percent of estimated insured deposits by September 30, 2020.

“(e) OFFSET.—In setting the assessments necessary to meet the requirements of subsection (d), the Corporation shall offset the effect of subsection (d) on insured depository institutions with total consolidated assets of less than \$10,000,000,000.”

[For definitions of terms used in section 334(c)–(e) of Pub. L. 111-203, set out above, see section 5301 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.

#### REPORT TO CONGRESS ON REFUNDS, DIVIDENDS, AND CREDITS FROM DEPOSIT INSURANCE FUND

Pub. L. 109-173, §5, Feb. 15, 2006, 119 Stat. 3606, required that any determination under former subsection (e)(2)(E) of this section be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 270 days after making such determination and provided that the report submitted include a detailed explanation for the determination and a discussion of the factors required to be considered under former subsection (e)(2)(F) of this section.

#### SPECIAL ASSESSMENT TO CAPITALIZE SAIF

Pub. L. 104-208, div. A, title II, §2702, Sept. 30, 1996, 110 Stat. 3009-479, provided that the Board of Directors of the Federal Deposit Insurance Corporation was to 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 determined would cause the Savings Association Insurance Fund to achieve the designated reserve ratio on the first business day of the 1st month beginning after Sept. 30, 1996.

#### 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.

### § 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)<sup>1</sup> 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;

<sup>1</sup> See References in Text note below.