

§ 1831m. Early identification of needed improvements in financial management

(a) Annual report on financial condition and management

(1) Report required

Each insured depository institution shall submit an annual report to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State).

(2) Contents of report

Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b) of this section; and

(ii) an independent public accountant under subsections (c) and (d) of this section; and

(B) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the financial condition and management of the institution.

(3) Public availability

Any annual report required under paragraph (1) shall be available for public inspection. Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.

(b) Management responsibility for financial statements and internal controls

Each insured depository institution shall prepare—

(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

(2) a report signed by the chief executive officer and the chief accounting or financial officer of the institution which contains—

(A) a statement of the management's responsibilities for—

(i) preparing financial statements;

(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(iii) complying with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency; and

(B) an assessment, as of the end of the institution's most recent fiscal year, of—

(i) the effectiveness of such internal control structure and procedures; and

(ii) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency.

(c) Internal control evaluation and reporting requirements for independent public accountants

(1) In general

With respect to any internal control report required by subsection (b)(2) of this section of any institution, the institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in such report.

(2) Attestation requirements

Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

(d) Annual independent audits of financial statements

(1) Audits required

The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 1831n of this title.

(2) Scope of audit

In connection with any audit under this subsection, the independent public accountant shall determine and report whether the financial statements of the institution—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

(3) Requirements for insured subsidiaries of holding companies

The requirements for an independent audit under this subsection may be satisfied for insured depository institutions that are subsidiaries of a holding company by an independent audit of the holding company.

(e) Repealed. Pub. L. 104-208, div. A, title II, § 2301(a), Sept. 30, 1996, 110 Stat. 3009-419

(f) Form and content of reports and auditing standards

(1) In general

The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

(2) Consultation

The Corporation shall consult with the other appropriate Federal banking agencies in implementing this subsection.

(g) Improved accountability

(1) Independent audit committee

(A) Establishment

Each insured depository institution (to which this section applies) shall have an

independent audit committee entirely made up of outside directors who are independent of management of the institution, except as provided in subparagraph (D), and who satisfy any specific requirements the Corporation may establish.

(B) Duties

An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections (b)(2), (c), and (d) of this section.

(C) Criteria applicable to committees of large insured depository institutions

In the case of each insured depository institution which the Corporation determines to be a large institution, the audit committee required by subparagraph (A) shall—

- (i) include members with banking or related financial management expertise;
- (ii) have access to the committee's own outside counsel; and
- (iii) not include any large customers of the institution.

(D) Exemption authority

(i) In general

An appropriate Federal banking agency may, by order or regulation, permit the independent audit committee of an insured depository institution to be made up of less than all, but no fewer than a majority of, outside directors, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the internal audit committee of the institution.

(ii) Factors to be considered

In determining whether an insured depository institution has encountered hardships referred to in clause (i), the appropriate Federal banking agency shall consider factors such as the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors to the board of directors of the institution who may serve on the internal audit committee.

(2) Review of quarterly reports of large insured depository institutions

(A) In general

In the case of any insured depository institution which the Corporation has determined to be a large institution, the Corporation may require the independent public accountant retained by such institution to perform reviews of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

(B) Report to audit committee

The independent public accountant referred to in subparagraph (A) shall provide the audit committee of the insured depository institution with reports on the reviews under such subparagraph and the audit com-

mittee shall provide such reports to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor.

(C) Limitation on notice

Reports provided under subparagraph (B) shall be only for the information and use of the insured depository institution, the Corporation, any appropriate Federal banking agency, and any State bank supervisor that received the report.

(D) Notice to institution

The Corporation shall promptly notify an insured depository institution, in writing, of a determination pursuant to subparagraph (A) to require a review of such institution's quarterly financial reports.

(3) Qualifications of independent public accountants

(A) In general

All audit services required by this section shall be performed only by an independent public accountant who—

- (i) has agreed to provide related working papers, policies, and procedures to the Corporation, any appropriate Federal banking agency, and any State bank supervisor, if requested; and
- (ii) has received a peer review that meets guidelines acceptable to the Corporation.

(B) Reports on peer reviews

Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

(4) Enforcement actions

(A) In general

In addition to any authority contained in section 1818 of this title, the Corporation or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section.

(B) Joint rulemaking

The appropriate Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

(5) Notice by accountant of termination of services

Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the institution shall promptly notify the Corporation and each appropriate Federal banking agency pursuant to such rules as the Corporation and each appropriate Federal banking agency shall prescribe.

(h) Exchange of reports and information

(1) Report to the independent auditor

(A) In general

Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent

report of condition made by the institution (pursuant to this chapter or any other provision of law) and a copy of the most recent report of examination received by the institution.

(B) Additional information

In addition to the copies of the reports required to be provided under subparagraph (A), each insured depository institution shall provide the auditor with—

(i) a copy of any supervisory memorandum of understanding with such institution and any written agreement between such institution and any appropriate Federal banking agency or any appropriate State bank supervisor which is in effect during the period covered by the audit; and (ii) a report of—

(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 1818 of this title;

(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

(III) any assessment of any civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

(2) Reports to banking agencies

(A) Independent auditor reports

Each insured depository institution shall provide to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report within 15 days of receipt of any such report, qualification, or letter from the institution's independent auditors.

(B) Notice of change of auditor

Each insured depository institution shall provide written notification to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor of the resignation or dismissal of the institution's independent auditor or the engagement of a new independent auditor by the institution, including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.

(i) Requirements for insured subsidiaries of holding companies

(1) In general

Except with respect to any audit requirements established under or pursuant to subsection (d) of this section, the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

(A) services and functions comparable to those required under this section are provided at the holding company level; and

(B) the institution—

(i) has total assets, as of the beginning of such fiscal year, of less than \$5,000,000,000; or

(ii) has—

(I) total assets, as of the beginning of such fiscal year, of \$5,000,000,000, or more; and

(II) a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

(2) Large institutions

For purposes of this subsection, in the case of an insured depository institution described in paragraph (1)(B)(ii) that the Corporation determines to be a large institution, the audit committee of the holding company of such an institution shall not include any large customers of the institution.

(3) Applicability based on risk to fund

The appropriate Federal banking agency may require an institution with total assets in excess of \$9,000,000,000 to comply with this section, notwithstanding the exemption provided by this subsection, if it determines that such exemption would create a significant risk to the Deposit Insurance Fund if applied to that institution.

(j) Exemption for small depository institutions

This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

(1) \$150,000,000; or

(2) such amount (in excess of \$150,000,000) as the Corporation may prescribe by regulation.

(Sept. 21, 1950, ch. 967, §2[36], as added Pub. L. 102-242, title I, §112(a), Dec. 19, 1991, 105 Stat. 2242; amended Pub. L. 102-550, title XVI, §1603(b)(3), Oct. 28, 1992, 106 Stat. 4079; Pub. L. 103-325, title III, §314, Sept. 23, 1994, 108 Stat. 2221; Pub. L. 104-208, div. A, title II, §§2301, 2704(d)(14)(Z), Sept. 30, 1996, 110 Stat. 3009-419, 3009-494; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §8(a)(34), Feb. 15, 2006, 119 Stat. 3615.)

AMENDMENTS

2006—Subsec. (i)(3). Pub. L. 109-173 substituted “Deposit Insurance Fund” for “affected deposit insurance fund”.

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

1996—Subsec. (a)(3). Pub. L. 104-208, §2301(c), inserted at end “Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.”

Subsec. (e). Pub. L. 104-208, §2301(a), inserted “[Repealed]” and struck out heading and text of subsec. (e). Text read as follows:

“(1) IN GENERAL—An independent public accountant shall apply procedures agreed upon by the Corporation to objectively determine the extent of the compliance of any insured depository institution or depository institution holding company with laws and regulations designated by the Corporation, in consultation with the appropriate Federal banking agencies.

“(2) ATTESTATION REQUIREMENTS—Any attestation pursuant to paragraph (1) shall be made in accordance

with generally accepted standards for attestation engagements.”

Subsec. (g)(1)(A). Pub. L. 104-208, § 2301(b)(1), inserted “, except as provided in subparagraph (D)” after “management of the institution”.

Subsec. (g)(1)(D). Pub. L. 104-208, § 2301(b)(2), added subpar. (D).

Subsec. (i)(3). Pub. L. 104-208, § 2704(d)(14)(Z), which directed substitution of “Deposit Insurance Fund” for “affected deposit insurance fund”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (g)(2)(D). Pub. L. 103-325, § 314(b), added subpar. (D).

Subsec. (i). Pub. L. 103-325, § 314(a), inserted par. (1) designation and heading before “Except with respect to”, redesignated former par. (1) as subpar. (A) of par. (1), added subpar. (B) of par. (1) and pars. (2) and (3), and struck out former par. (2) which read as follows: “either—

“(A) the institution has total assets, as of the beginning of such fiscal year, of less than \$5,000,000,000; or

“(B) the institution—

“(i) has total assets, as of the beginning of such fiscal year, of more than \$5,000,000,000 and less than \$9,000,000,000; and

“(ii) has a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.”

1992—Subsec. (b)(2)(A)(iii). Pub. L. 102-550, § 1603(b)(3)(A), substituted “Corporation and” for “Corporation or”.

Subsec. (g)(3)(A)(i). Pub. L. 102-550, § 1603(b)(3)(B), substituted “any appropriate” for “an appropriate”.

Subsec. (g)(5). Pub. L. 102-550, § 1603(b)(3)(C), inserted “and each appropriate Federal banking agency” after “Corporation” in two places.

EFFECTIVE DATE OF 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 section 2704(d)(14)(Z) of Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, formerly set out as a note under section 1821 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

EFFECTIVE DATE

Section 112(c), formerly 112(b), of Pub. L. 102-242, as redesignated by Pub. L. 102-550, title XVI, § 1603(b)(2)(A), Oct. 28, 1992, 106 Stat. 4079, provided that: “The requirements established by the amendment made by subsection (a) [enacting this section] shall apply with respect to fiscal years of insured depository institutions which begin after December 31, 1992.”

§ 1831m-1. Reports of information regarding safety and soundness of depository institutions

(a) Reports to appropriate Federal banking agencies

(1) In general

The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall, unless otherwise prohibited by law, disclose to the appropriate Federal banking agency any information that the Attorney General, the Secretary of the Treasury, or such agency head believes raises significant concerns regarding the safety or soundness of any depository institution doing business in the United States.

(2) Exceptions

(A) Intelligence information

(i) In general

The Director of Central Intelligence shall disclose to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury, shall disclose the intelligence information to the appropriate Federal banking agency.

(ii) Procedures for receipt of intelligence information

Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for receipt of intelligence information that are adequate to protect the intelligence information.

(B) Criminal investigations, safety of Government investigators, informants, and witnesses

If the Attorney General, the Secretary of the Treasury or their respective designees determines that the disclosure of information pursuant to paragraph (1) may jeopardize a pending civil investigation or litigation, or a pending criminal investigation or prosecution, may result in serious bodily injury or death to Government employees, informants, witnesses or their respective families, or may disclose sensitive investigative techniques and methods, the Attorney General or the Secretary of the Treasury shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation, litigation, or prosecution, threatening serious bodily injury or death to Government employees, informants, or witnesses or their respective families, or disclosing sensitive investigation techniques and methods; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information