

ing as in section 3 of the Federal Deposit Insurance Act.

“(3) LEVERAGE LIMIT.—The term ‘leverage limit’ has the same meaning as in section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831o].

“(4) QUALIFYING AMOUNT ATTRIBUTABLE TO INSURANCE PROCEEDS.—The term ‘qualifying amount attributable to insurance proceeds’ means the amount (if any) by which the institution’s total assets exceed the institution’s average total assets during the calendar quarter ending before the date of any determination referred to in subsection (a)(1)(A), because of the deposit of insurance payments or governmental assistance made with respect to damage caused by, or other costs resulting from, the major disaster.” Similar provisions were contained in the following prior acts:

Pub. L. 103-76, § 3, Aug. 12, 1993, 107 Stat. 753.

Pub. L. 102-485, § 4, Oct. 23, 1992, 106 Stat. 2772.

TRANSITION RULE REGARDING CURRENT DIRECTORS AND SENIOR EXECUTIVE OFFICERS

Section 131(e) of Pub. L. 102-242 provided that:

“(1) DISMISSAL FROM OFFICE.—Section 38(f)(2)(F)(ii) of the Federal Deposit Insurance Act [12 U.S.C. 1831o(f)(2)(F)(ii)] (as added by subsection (a)) shall not apply with respect to—

“(A) any director whose current term as a director commenced on or before the date of enactment of this Act [Dec. 19, 1991] and has not been extended—

“(i) after that date of enactment, or

“(ii) to evade section 38(f)(2)(F)(ii); or

“(B) any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

“(i) after that date of enactment, or

“(ii) to evade section 38(f)(2)(F)(ii).

“(2) RESTRICTING COMPENSATION.—Section 38(f)(4) of the Federal Deposit Insurance Act [12 U.S.C. 1831o(f)(4)] (as added by subsection (a)) shall not apply with respect to any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act [Dec. 19, 1991] and whose contract of employment has not been renewed or renegotiated—

“(A) after that date of enactment, or

“(B) to evade section 38(f)(4).”

§ 1831o-1. Source of strength

(a) Holding companies

The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.

(b) Other companies

If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

(c) Reports

The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or in-

directly controls the insured depository institution, to submit a report, under oath, for the purposes of—

(1) assessing the ability of such company to comply with the requirement under subsection (b); and

(2) enforcing the compliance of such company with the requirement under subsection (b).

(d) Rules

Not later than 1 year after the transfer date, as defined in section 5411 of this title, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

(e) Definition

In this section, the term “source of financial strength” means the ability of a company that directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.

(Sept. 21, 1950, ch. 967, § 2[38A], as added Pub. L. 111-203, title VI, § 616(d), July 21, 2010, 124 Stat. 1616.)

EFFECTIVE DATE

Section effective on the transfer date, see section 616(e) of Pub. L. 111-203, set out as an Effective Date of 2010 Amendment note under section 1467a of this title.

§ 1831p. Transferred

CODIFICATION

Section, act Sept. 21, 1950, ch. 967, § 2[39], as added Dec. 19, 1991, Pub. L. 102-242, title II, § 228, 105 Stat. 2308, which related to notice of branch closure, was renumbered section 2[42] of act Sept. 21, 1950, by Pub. L. 102-550, title XI, § 1602(a), Oct. 28, 1992, 106 Stat. 4079, and transferred to section 1831r-1 of this title.

§ 1831p-1. Standards for safety and soundness

(a) Operational and managerial standards

Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards relating to—

(A) internal controls, information systems, and internal audit systems, in accordance with section 1831m of this title;

(B) loan documentation;

(C) credit underwriting;

(D) interest rate exposure;

(E) asset growth; and

(F) compensation, fees, and benefits, in accordance with subsection (c) of this section; and

(2) such other operational and managerial standards as the agency determines to be appropriate.

(b) Asset quality, earnings, and stock valuation standards

Each appropriate Federal banking agency shall prescribe standards, by regulation or guideline, for all insured depository institutions relating to asset quality, earnings, and stock valuation that the agency determines to be appropriate.

(c) Compensation standards

Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards prohibiting as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that—

(A) would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits; or

(B) could lead to material financial loss to the institution;

(2) standards specifying when compensation, fees, or benefits referred to in paragraph (1) are excessive, which shall require the agency to determine whether the amounts are unreasonable or disproportionate to the services actually performed by the individual by considering—

(A) the combined value of all cash and noncash benefits provided to the individual;

(B) the compensation history of the individual and other individuals with comparable expertise at the institution;

(C) the financial condition of the institution;

(D) comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(E) for postemployment benefits, the projected total cost and benefit to the institution;

(F) any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

(G) other factors that the agency determines to be relevant; and

(3) such other standards relating to compensation, fees, and benefits as the agency determines to be appropriate.

(d) Standards to be prescribed**(1) In general**

Standards under subsections (a), (b), and (c) of this section shall be prescribed by regulation or guideline. Such regulations or guidelines may not prescribe standards that set a specific level or range of compensation for directors, officers, or employees of insured depository institutions.

(2) Applicability of other laws

Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to restrict the level of compensation, including golden parachute payments (as defined in section 1828(k)(4) of this title), paid to any director, officer, or employee of an insured depository institution under any other provision of law.

(3) Senior executive officers at undercapitalized institutions

Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to

restrict compensation paid to any senior executive officer of an undercapitalized insured depository institution pursuant to section 1831o of this title.

(4) Safety and soundness or enforcement actions

Paragraph (1) shall not be construed as affecting the authority of any appropriate Federal banking agency under any provision of this chapter other than this section, or under any other provision of law, to prescribe a specific level or range of compensation for any director, officer, or employee of an insured depository institution—

(A) to preserve the safety and soundness of the institution; or

(B) in connection with any action under section 1818 of this title or any order issued by the agency, any agreement between the agency and the institution, or any condition imposed by the agency in connection with the agency's approval of an application or other request by the institution, which is enforceable under section 1818 of this title.

(e) Failure to meet standards**(1) Plan required****(A) In general**

If the appropriate Federal banking agency determines that an insured depository institution fails to meet any standard prescribed under subsection (a) or (b) of this section—

(i) if such standard is prescribed by regulation of the agency, the agency shall require the institution to submit an acceptable plan to the agency within the time allowed by the agency under subparagraph (C); and

(ii) if such standard is prescribed by guideline, the agency may require the institution to submit a plan described in clause (i).

(B) Contents of plan

Any plan required under subparagraph (A) shall specify the steps that the institution will take to correct the deficiency. If the institution is undercapitalized, the plan may be part of a capital restoration plan.

(C) Deadlines for submission and review of plans

The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide institutions and companies with reasonable time to submit plans required under subparagraph (A), and generally require the institution to submit a plan not later than 30 days after the agency determines that the institution fails to meet any standard prescribed under subsection (a), (b), or (c) of this section; and

(ii) require the agency to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

(2) Order required if institution fails to submit or implement plan

If an insured depository institution fails to submit an acceptable plan within the time al-

lowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the appropriate Federal banking agency, the agency, by order—

(A) shall require the institution to correct the deficiency; and

(B) may do 1 or more of the following until the deficiency has been corrected:

(i) Prohibit the institution from permitting its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the institution may increase from one calendar quarter to another.

(ii) Require the institution to increase its ratio of tangible equity to assets.

(iii) Take the action described in section 1831o(f)(2)(C) of this title.

(iv) Require the institution to take any other action that the agency determines will better carry out the purpose of section 1831o of this title than any of the actions described in this subparagraph.

(3) Restrictions mandatory for certain institutions

In complying with paragraph (2), the appropriate Federal banking agency shall take 1 or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

(A) the agency determines that the insured depository institution fails to meet any standard prescribed under subsection (a)(1) or (b)(1) of this section;

(B) the institution has not corrected the deficiency; and

(C) either—

(i) during the 24-month period before the date on which the institution first failed to meet the standard—

(I) the institution commenced operations; or

(II) 1 or more persons acquired control of the institution; or

(ii) during the 18-month period before the date on which the institution first failed to meet the standard, the institution underwent extraordinary growth, as defined by the agency.

(f) Definitions

For purposes of this section, the terms “average” and “capital restoration plan” have the same meanings as in section 1831o of this title.

(g) Other authority not affected

The authority granted by this section is in addition to any other authority of the Federal banking agencies.

(Sept. 21, 1950, ch. 967, §2[39], as added Pub. L. 102-242, title I, §132(a), Dec. 19, 1991, 105 Stat. 2267; amended Pub. L. 102-550, title IX, §956, Oct. 28, 1992, 106 Stat. 3895; Pub. L. 103-325, title III, §318(a)-(c), Sept. 23, 1994, 108 Stat. 2223, 2224.)

CODIFICATION

Section was formerly classified to section 1831s of this title.

Another section 2[39] of act Sept. 21, 1950, was renumbered section 2[42] and is classified to section 1831r-1 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-325, §318(c)(1), struck out “and depository institution holding companies” before “; prescribe” in introductory provisions.

Subsec. (b). Pub. L. 103-325, §318(a), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe—

“(1) standards specifying—

“(A) a maximum ratio of classified assets to capital;

“(B) minimum earnings sufficient to absorb losses without impairing capital; and

“(C) to the extent feasible, a minimum ratio of market value to book value for publicly traded shares of the institution or company; and

“(2) such other standards relating to asset quality, earnings, and valuation as the agency determines to be appropriate.”

Subsec. (d). Pub. L. 103-325, §318(b)(1), struck out “by regulation” after “Standards to be prescribed” in heading.

Subsec. (d)(1). Pub. L. 103-325, §318(b)(2), inserted “or guideline” before period at end of first sentence and inserted “or guidelines” after “Such regulations” in second sentence.

Subsec. (e)(1)(A). Pub. L. 103-325, §318(c)(2)(A)-(C), struck out “or depository institution holding company” after “insured depository institution”, substituted “or (b) of this section—

“(i) if such standard is prescribed by regulation of the agency, the agency shall require”

for “or (b) of this section the agency shall require”, struck out “or company” before “to submit an acceptable plan”, substituted “; and” for period at end of cl. (i), and added cl. (ii).

Subsec. (e)(1)(B), (C). Pub. L. 103-325, §318(c)(2)(A), struck out “or company” before “will take to correct” in subpar. (B) and before “to submit a plan” and “fails to meet any standard” in subpar. (C).

Subsec. (e)(2). Pub. L. 103-325, §318(c)(2)(B), struck out “or depository institution holding company” after “insured depository institution” in introductory provisions.

Subsec. (e)(2)(A), (B). Pub. L. 103-325, §318(c)(2)(A), struck out “or company” after “institution” wherever appearing.

1992—Subsec. (d). Pub. L. 102-550, §956(1), added subsec. (d) and struck out former subsec. (d) which read as follows: “Standards under subsections (a), (b), and (c) of this section shall be prescribed by regulation.”

Subsec. (e)(1)(A). Pub. L. 102-550, §956(2), substituted “(a) or (b)” for “(a), (b), or (c)”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 318(d) of Pub. L. 103-325 provided that: “The amendments made by this section [amending this section] shall be construed to have the same effective date as section 39 of the Federal Deposit Insurance Act [this section], as provided in section 132(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [Pub. L. 102-242, set out as an Effective Date note below].”

EFFECTIVE DATE

Section 132(c) of Pub. L. 102-242 provided that: “The amendment made by subsection (a) [enacting this section] shall become effective on the earlier of—

“(1) the date on which final regulations promulgated in accordance with subsection (b) [set out below] become effective [Final rules were published July 10, 1995, 60 F.R. 35674, eff. Aug. 9, 1995.]; or

“(2) December 1, 1993.”

REGULATIONS

Section 132(b) of Pub. L. 102-242 provided that: “Each appropriate Federal banking agency (as defined in sec-

tion 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813] shall promulgate final regulations under section 39 of the Federal Deposit Insurance Act [12 U.S.C. 1831p-1] (as added by subsection (a)) not later than August 1, 1993.”

§ 1831q. FDIC affordable housing program

(a) Purpose

The purpose of this section is to provide homeownership and rental housing opportunities for very low-income, low-income, and moderate-income families.

(b) Funding and limitations of program

(1) Duration of program

The provisions of this section shall be effective, subject to the provisions of paragraph (2), only during the 3-year period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A).

(2) Annual fiscal limitations

(A) In general

In each fiscal year during the 3-year period referred to in paragraph (1), the provisions of this section shall apply only—

(i) to such extent or in such amounts as are provided in appropriations Acts for any losses resulting during the fiscal year from the sale of properties under this section, except that such amounts for losses may not exceed \$30,000,000 in any fiscal year; and

(ii) to the extent that amounts are provided in appropriations Acts pursuant to subparagraph (C) for any other costs relating to the program under this section.

(B) Definition of losses

For purposes of this paragraph, the amount of losses resulting from the sale of properties under this section during any fiscal year shall be the amount equal to the sum of any affordable housing discounts reasonably anticipated to accrue during the fiscal year.

(C) Authorization of appropriations

There are authorized to be appropriated, for each fiscal year during the 3-year period referred to in paragraph (1), such sums as may be necessary for any costs of the program under this section other than losses resulting from the sale of properties under this section.

(D) Other definitions

For purposes of this paragraph:

(i) Affordable housing discount

The term “affordable housing discount” means, with respect to any eligible residential or eligible condominium property transferred under this section by the Corporation, the difference (if any) between the realizable disposition value of the property and the actual sale price of the property under this section.

(ii) Realizable disposition value

The term “realizable disposition value” means the estimated sale price that the

Corporation reasonably would be able to obtain upon the sale of a property by the Corporation under the provisions of this chapter, not including this section, and any other applicable laws. Not later than the expiration of the 120-day period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A), the Corporation shall establish, and publish in the Federal Register, procedures for determining the realizable disposition value of a property transferred under this section, which shall take into consideration such factors as the Corporation considers appropriate, including the actual sale prices of properties disposed of by the Resolution Trust Corporation under section 1441a(c)¹ of this title, the prices of other properties sold under similar programs, and the appraised value of the property transferred under this section. Until such procedures are established, the Corporation may consider the realizable disposition value of any eligible residential or condominium property to be equal to the appraised value of the property.

(3) Existing contracts

The provisions of this section shall not apply to any eligible residential property or any eligible condominium property that is subject to an agreement entered into by the Corporation before the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A) that provides for any other disposition of the property.

(c) Rules governing disposition of eligible single family properties

(1) Notice to clearinghouses

Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

(2) Offers to sell to nonprofit organizations, public agencies, and qualifying households

During the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to—

(A) qualifying households (including qualifying households with members who are veterans); or

(B) public agencies or nonprofit organizations that agree to (i) make the property

¹ See References in Text note below.