

shall promulgate final regulations implementing this section.

(h) Alternative system permitted

(1) In general

At the discretion of the appropriate Federal banking agency, this section shall not apply if the regulations of the agency provide that the aggregate amount of capital and reserves required with respect to the transfer of small business loans and leases of personal property with recourse does not exceed the aggregate amount of capital and reserves that would be required under subsection (b) of this section.

(2) Existing transactions not affected

Notwithstanding paragraph (1), this section shall remain in effect with respect to transfers of small business loans and leases of personal property with recourse by qualified insured depository institutions occurring before the effective date of regulations referred to in paragraph (1).

(i) Definitions

For purposes of this section—

(1) the term “adequately capitalized” has the same meaning as in section 1831o(b) of this title;

(2) the term “appropriate Federal banking agency” has the same meaning as in section 1813 of this title;

(3) the term “capital standards” has the same meaning as in section 1831o(c) of this title;

(4) the term “Federal banking agencies” has the same meaning as in section 1813 of this title;

(5) the term “insured depository institution” has the same meaning as in section 1813 of this title;

(6) the term “other capital measures” has the meaning as in section 1831o(c) of this title;

(7) the term “recourse” has the meaning given to such term under generally accepted accounting principles;

(8) the term “small business” means a business that meets the criteria for a small business concern established by the Small Business Administration under section 632(a) of title 15; and

(9) the term “well capitalized” has the same meaning as in section 1831o(b) of this title.

(Pub. L. 103-325, title II, §208, Sept. 23, 1994, 108 Stat. 2201.)

CODIFICATION

Section was enacted as part of the Small Business Loan Securitization and Secondary Market Enhancement Act of 1994 and as part of the Riegle Community Development and Regulatory Improvement Act of 1994, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

§ 1835a. Prohibition against deposit production offices

(a) Regulations

The appropriate Federal banking agencies shall prescribe uniform regulations effective June 1, 1997, which prohibit any out-of-State bank from using any authority to engage in

interstate branching pursuant to this title,¹ or any amendment made by this title¹ to any other provision of law, primarily for the purpose of deposit production.

(b) Guidelines for meeting credit needs

Regulations issued under subsection (a) of this section shall include guidelines to ensure that interstate branches operated by an out-of-State bank in a host State are reasonably helping to meet the credit needs of the communities which the branches serve.

(c) Limitation on out-of-State loans

(1) Limitation

Regulations issued under subsection (a) of this section shall require that, beginning no earlier than 1 year after establishment or acquisition of an interstate branch or branches in a host State by an out-of-State bank, if the appropriate Federal banking agency for the out-of-State bank determines that the bank's level of lending in the host State relative to the deposits from the host State (as reasonably determinable from available information including the agency's sampling of the bank's loan files during an examination or such data as is otherwise available) is less than half the average of total loans in the host State relative to total deposits from the host State (as determinable from relevant sources) for all banks the home State of which is such State—

(A) the appropriate Federal banking agency for the out-of-State bank shall review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host State; and

(B) if the agency determines that the out-of-State bank is not reasonably helping to meet those needs—

(i) the agency may order that an interstate branch or branches of such bank in the host State be closed unless the bank provides reasonable assurances to the satisfaction of the appropriate Federal banking agency that the bank has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank in the host State; and

(ii) the out-of-State bank may not open a new interstate branch in the host State unless the bank provides reasonable assurances to the satisfaction of the appropriate Federal banking agency that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(2) Considerations

In making a determination under paragraph (1)(A), the appropriate Federal banking agency shall consider—

(A) whether the interstate branch or branches of the out-of-State bank were formerly part of a failed or failing depository institution;

(B) whether the interstate branch was acquired under circumstances where there was a low loan-to-deposit ratio because of the

¹ See References in Text note below.

nature of the acquired institution's business or loan portfolio;

(C) whether the interstate branch or branches of the out-of-State bank have a higher concentration of commercial or credit card lending, trust services, or other specialized activities;

(D) the ratings received by the out-of-State bank under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.];

(E) economic conditions, including the level of loan demand, within the communities served by the interstate branch or branches of the out-of-State bank; and

(F) the safe and sound operation and condition of the out-of-State bank.

(3) Branch closing procedure

(A) Notice required

Before exercising any authority under paragraph (1)(B)(i), the appropriate Federal banking agency shall issue to the bank a notice of the agency's intention to close an interstate branch or branches and shall schedule a hearing.

(B) Hearing

Section 1818(h) of this title shall apply to any proceeding brought under this paragraph.

(d) Application

This section shall apply with respect to any interstate branch established or acquired in a host State pursuant to this title¹ or any amendment made by this title¹ to any other provision of law.

(e) Definitions

For the purposes of this section, the following definitions shall apply:

(1) Appropriate Federal banking agency, bank, State, and State bank

The terms "appropriate Federal banking agency", "bank", "State", and "State bank" have the same meanings as in section 1813 of this title.

(2) Home State

The term "home State" means—

(A) in the case of a national bank, the State in which the main office of the bank is located; and

(B) in the case of a State bank, the State by which the bank is chartered.

(3) Host State

The term "host State" means a State in which a bank establishes a branch other than the home State of the bank.

(4) Interstate branch

The term "interstate branch" means a branch established pursuant to this title¹ or any amendment made by this title¹ to any other provision of law and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 1841(o)(7) of this title).

(5) Out-of-State bank

The term "out-of-State bank" means, with respect to any State, a bank the home State of

which is another State and, for purposes of this section, includes a foreign bank, the home State of which is another State.

(Pub. L. 103-328, title I, §109, Sept. 29, 1994, 108 Stat. 2362; Pub. L. 106-102, title I, §106, Nov. 12, 1999, 113 Stat. 1359.)

REFERENCES IN TEXT

This title, referred to in subsecs. (a), (d), and (e)(4), is title I of Pub. L. 103-328, Sept. 29, 1994, 108 Stat. 2339, which enacted this section and sections 43, 215a-1, and 1831u of this title, amended sections 30, 36, 215, 215a, 215b, 1462a, 1820, 1828, 1831a, 1831r-1, 1841, 1842, 1846, 2906, 3103 to 3105, and 3106a of this title and section 1927 of Title 7, Agriculture, enacted provisions set out as notes under sections 215, 1811, 1828, 3104, 3105, and 3107 of this title and section 1927 of Title 7, and amended provisions set out as a note under section 1811 of this title. For complete classification of this title to the Code, see Tables.

The Community Reinvestment Act of 1977, referred to in subsec. (c)(2)(D), is title VIII of Pub. L. 95-128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (e)(4), Pub. L. 106-102 inserted before period at end "and any branch of a bank controlled by an out-of-State bank holding company (as defined in section 1841(o)(7) of this title)".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

CHAPTER 17—BANK HOLDING COMPANIES

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§ 1841. Definitions

(a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this chapter.

(2) Any company has control over a bank or over any company if—