§ 1831t. Depository institutions lacking Federal deposit insurance

(a) Annual independent audit of private deposit insurers

(1) Audit required

Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) Providing copies of audit report

(A) Private deposit insurer

The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

(B) Depository institution

Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(3) Enforcement by appropriate State supervisor

Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) Disclosure required

Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) Periodic statements; account records

Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate.[1] a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

(2) Advertising; premises

(A) In general

Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) Exceptions

The following need not include a notice that the institution is not federally insured:

(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) Acknowledgment of disclosure

(A) New depositors obtained other than through a conversion or merger

With respect to any depositor who was not a depositor at the depository institution before October 13, 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) New depositors obtained through a conversion or merger

With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after October 13, 2006, receive any deposit for the account of such depositor only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) Current depositors

Receive any deposit after October 13, 2006, for the account of any depositor who was a depositor on that date only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

(D) Alternative provision of notice to new depositors obtained through a conversion or merger

(i)[2] In general

Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

[1] So in original. The period probably should not appear.

[2] So in original. No cl. (ii) has been enacted.

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(E) Alternative provision of notice to current depositors

(i) In general

Transmit to each depositor who was a depositor before October 13, 2006, and has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) Manner and timing of notice

(I) First notice

Make the transmission described in clause (i) via mail not later than three months after October 13, 2006.

(II) Second notice

Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) Manner and content of disclosure

To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Bureau, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.

(d) Exceptions for institutions not receiving retail deposits

The Bureau may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

(e) Definitions

For purposes of this section:

(1) Appropriate supervisor

The ''appropriate supervisor'' of a depository institution means the agency primarily responsible for supervising the institution.

(2) Depository institution

The term ''depository institution'' includes—

(A) any entity described in section 461(b)(1)(A)(iv) of this title; and

(B) any entity that, as determined by the Bureau—

(i) is engaged in the business of receiving deposits; and

(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

(3) Lacking Federal deposit insurance

A depository institution lacks Federal deposit insurance if the institution is not either—

(A) an insured depository institution; or

(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act [12 U.S.C. 1752].

(4) Private deposit insurer

The term ''private deposit insurer'' means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

(5) Bureau

The term ''Bureau'' means the Bureau of Consumer Financial Protection.

(f) Enforcement

(1) Limited enforcement authority

Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.

(2) Broad State enforcement authority

(A) In general

Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) State powers

For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) Limitation on State action while Federal action pending

If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.

(Sept. 21, 1950, ch. 967, § 2[43], formerly § 2[40], as added Pub. L. 102–242, title I, § 151(a)(1), Dec. 19, 1991, 105 Stat. 2282; renumbered § 2[43], Pub. L. 102–550, title XVI § 1602(b), Oct. 28, 1992, 106 Stat. 4078; amended Pub. L. 103–325, title III, § 340(a), Sept. 23, 1994, 108 Stat. 2237; Pub. L. 109–173, § 2(c)(3), Feb. 15, 2006, 119 Stat. 3602; Pub. L. 109–351, title V, § 505, Oct. 13, 2006, 120 Stat. 1975; Pub. L. 111–203, title X, § 1090(2), July 21, 2010, 124 Stat. 2094.)

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (f)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§ 5481 et seq.) of chapter 53 of this title and enacted, amended, and repealed numerous other sections and notes in the Code. Subtitle B of the Act is classified generally to part B (§ 5511 et seq.) of subchapter V of chapter 53 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (f)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

2010—Subsecs. (c), (d), (e)(2)(B). Pub. L. 111–203, § 1090(2)(A)–(C)(i), substituted ''Bureau'' for ''Federal Trade Commission''.

Subsec. (e)(5). Pub. L. 111–203, § 1090(2)(C)(ii), added par. (5).

Subsec. (f)(1). Pub. L. 111–203, § 1090(2)(D)(i), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.''

Subsec. (f)(2)(C). Pub. L. 111–203, § 1090(2)(D)(ii), added subpar. (C) and struck out former subpar. (C). Prior to amendment, text read as follows: ''If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this section that is alleged in that complaint.''

2006—Subsec. (a)(3). Pub. L. 109–351, § 505(a), added par. (3).

Subsec. (b)(1). Pub. L. 109–351, § 505(b), substituted ''or share certificate.'' for ''or similar instrument evidencing a deposit''.

Subsec. (b)(2). Pub. L. 109–351, § 505(c), amended heading and text generally. Prior to amendment, text read as follows: ''Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.''

Subsec. (b)(3). Pub. L. 109–351, § 505(d), amended par. (3) generally. Prior to amendment, par. (3) related to acknowledgement of disclosure and consisted of subpars. (A) to (C).

Subsec. (c). Pub. L. 109–351, § 505(e), amended heading and text generally. Prior to amendment, text read as follows: ''To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section.''

Subsec. (d). Pub. L. 109–173 substituted ''an amount equal to the standard maximum deposit insurance amount'' for ''$100,000''.

Subsec. (e). Pub. L. 109–351, § 505(f), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to eligibility for Federal deposit insurance.

Subsec. (f). Pub. L. 109–351, § 505(g), amended heading and text generally. Prior to amendment, text read as follows: ''Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.''

Pub. L. 109–351, § 505(f)(2), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 109–351, § 505(f)(2), redesignated subsec. (g) as (f).

1994—Subsec. (b)(3). Pub. L. 103–325 amended heading and text of subsec. (b)(3) generally. Prior to amendment, text read as follows: ''Receive deposits only for the account of persons who have signed a written acknowledgment that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that they will get back their money.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–325, title III, § 340(b), Sept. 23, 1994, 108 Stat. 2238, provided that: ''Section 43(b)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(b)(3)], as amended by subsection (a), shall take effect in accordance with section 151(a)(2)(D) of the Federal Deposit Insurance Corporation Improvement Act of 1991 [see Effective Date note below].''

EFFECTIVE DATE

Pub. L. 102–242, title I, § 151(a)(2), Dec. 19, 1991, 105 Stat. 2284, provided that: ''Section 40 of the Federal Deposit Insurance Act [12 U.S.C. 1831t] (as added by paragraph (1)) shall become effective on the date of enactment of this Act [Dec. 19, 1991], except that—

''(A) paragraphs (1) and (2) of subsection (b) shall become effective 1 year after the date of enactment of this Act;

''(B) during the period beginning 1 year after that date of enactment of this Act and ending 30 months after that date of enactment, subsection (b)(1) shall apply with ', and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money' omitted;

''(C) subsection (e) shall become effective 2 years after that date of enactment; and

''(D) subsection (b)(3) shall become effective 30 months after that date of enactment.''

VIABILITY OF PRIVATE DEPOSIT INSURERS

Pub. L. 102–242, title I, § 151(b), Dec. 19, 1991, 105 Stat. 2285, as amended by Pub. L. 102–550, title XVI, § 1603(f)(1), Oct. 28, 1992, 106 Stat. 4081, provided that:

''(1) DEADLINE FOR INITIAL INDEPENDENT AUDIT.—The initial annual audit under section 43(a)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(a)(1)] (as added by subsection (a)) shall be completed not later than 120 days after the date of enactment of this Act [Dec. 19, 1991].

''(2) BUSINESS PLAN REQUIRED.—Not later than 240 days after the date of enactment of this Act [Dec. 19, 1991], any private deposit insurer shall provide a business plan to each appropriate supervisor of each State in which deposits are received by any depository institution lacking Federal deposit insurance the deposits of which are insured by a private deposit insurer. The business plan shall explain in detail why the private deposit insurer is viable, and shall, at a minimum—

''(A) describe the insurer's—

''(i) underwriting standards;

''(ii) resources, including trends in and forecasts of assets, income, and expenses;

''(iii) risk-management program, including examination and supervision, problem case resolution, and remedies; and

''(B) include, for the preceding 5 years, copies of annual audits, annual reports, and annual meeting agendas and minutes.

''(3) DEFINITIONS.—For purposes of this subsection, the terms 'appropriate supervisor', 'depository institution', 'lacking Federal deposit insurance', and 'private deposit insurer' have the same meaning as in section 43(f) of the Federal Deposit Insurance Act [12 U.S.C. 1831t(f)] (as added by subsection (a)).''

§ 1831u. Interstate bank mergers

(a) Approval of interstate merger transactions authorized

(1) In general

Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 1828(c) of this title between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

(2) State election to prohibit interstate merger transactions

(A) In general

Notwithstanding paragraph (1), a merger transaction may not be approved pursuant to paragraph (1) if the transaction involves a bank the home State of which has enacted a law after September 29, 1994, and before June 1, 1997, that—

(i) applies equally to all out-of-State banks; and

(ii) expressly prohibits merger transactions involving out-of-State banks.

(B) No effect on prior approvals of merger transactions

A law enacted by a State pursuant to subparagraph (A) shall have no effect on merger transactions that were approved before the effective date of such law.

(3) State election to permit early interstate merger transactions

(A) In general

A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that—

(i) applies equally to all out-of-State banks; and

(ii) expressly permits interstate merger transactions with all out-of-State banks.

(B) Certain conditions allowed

A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if—

(i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);

(ii) the imposition of the conditions is not preempted by Federal law; and

(iii) the conditions do not apply or require performance after May 31, 1997.

(4) Interstate merger transactions involving acquisitions of branches

(A) In general

An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

(B) Treatment of branch for purposes of this section

In the case of an interstate merger transaction which involves the acquisition of a branch of an insured bank without the acquisition of the bank, the branch shall be treated, for purposes of this section, as an insured bank the home State of which is the State in which the branch is located.

(5) Preservation of State age laws

(A) In general

The responsible agency may not approve an application pursuant to paragraph (1) that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(B) Special rule for State age laws specifying a period of more than 5 years

Notwithstanding subparagraph (A), the responsible agency may approve a merger transaction pursuant to paragraph (1) involving the acquisition of a bank that has been in existence at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(6) Shell banks

For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank or branch shall be deemed to have been in existence for the same period of time as the bank or branch to be acquired.

(b) Provisions relating to application and approval process

(1) Compliance with State filing requirements

(A) In general

Any bank which files an application for an interstate merger transaction shall—

(i) comply with the filing requirements of any host State of the bank which will result from such transaction to the extent that the requirement—

(I) does not have the effect of discriminating against out-of-State banks or