

“(3) CHANGE IN CONTROL.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

“(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank—

“(i) that—

“(I) is in danger of default, as determined by the appropriate Federal banking agency;

“(II) results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency; or

“(III) results from an acquisition of voting shares of a publicly traded company that controls an industrial bank, credit card bank, or trust bank, if, after the acquisition, the acquiring shareholder (or group of shareholders acting in concert) holds less than 25 percent of any class of the voting shares of the company; and

“(ii) that has obtained all regulatory approvals otherwise required for such change of control under any applicable Federal or State law, including section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)).

“(4) SUNSET.—This subsection shall cease to have effect 3 years after the date of enactment of this Act [July 21, 2010].”

[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

Pub. L. 101-73, title II, §206(b), Aug. 9, 1989, 103 Stat. 205, 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 sub-

paragraphs (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