

for “the Bank Insurance Fund, the Savings Association Insurance Fund,” in two places, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1991—Subsec. (h). Pub. L. 102-242 added subsec. (h).

1989—Subsec. (a). Pub. L. 101-73, §220(a)(1), added heading and text and struck out former subsec. (a) which read as follows: “The Corporation shall annually make a report of its operations to the Congress as soon as practicable after the 1st day of January in each year.”

Subsecs. (b) to (g). Pub. L. 101-73, §220(a)(2), (3), added subsecs. (b) to (d) and redesignated former subsecs. (b) to (d) as (e) to (g), respectively.

1975—Subsec. (b). Pub. L. 93-604, §602(a), inserted provisions that the Corporation shall be audited at least once in every three years.

Subsec. (c). Pub. L. 93-604, §602(b), substituted provisions that a report of each audit conducted under subsec. (b) of this section shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of previous year covered by such audit, for provisions that a report of the audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than Jan. 15 following the close of such fiscal year.

#### 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.

#### FINAL REPORTS ON RTC AND SAIF FUNDING

Pub. L. 103-204, §28, Dec. 17, 1993, 107 Stat. 2410, provided that:

“(a) IN GENERAL.—

“(1) RTC REPORT.—The Chairperson of the Thrift Depositor Protection Oversight Board shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, a final report containing a detailed description of the purposes for which the funds made available to the Resolution Trust Corporation under this Act [See Short Title of 1993 Amendment note set out under section 1421 of this title] were used.

“(2) SAIF REPORT.—The Chairperson of the Federal Deposit Insurance Corporation shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a final report containing a detailed description of the purposes for which the funds made available to the Savings Association Insurance Fund under this Act were used.

“(b) TIME FOR SUBMISSION.—The reports described in subsection (a) shall be transmitted—

“(1) not later than 45 days after the final expenditure of funds provided for under this Act by the Resolution Trust Corporation; and

“(2) not later than 45 days after the final expenditure of funds authorized to be provided under this Act by the Savings Association Insurance Fund.”

#### REPORT TO CONGRESS ON RISK-BASED ASSESSMENTS

Pub. L. 101-73, title II, §220(b)(1), Aug. 9, 1989, 103 Stat. 265, directed Federal Deposit Insurance Corpora-

tion to study establishment of premium assessment categories related to types of risk to insurance funds and report its recommendations to Congress not later than Jan. 1, 1991; if Corporation recommended establishment of such a risk-based assessment plan, it was to provide a timetable and plan for implementation; and not later than 180 days after receipt of report and accompanying plan and timetable, Congress was to make a recommendation to Chairperson of Board of Directors regarding disposition of such plan and timetable.

### § 1828. Regulations governing insured depository institutions

#### (a) Representations of deposit insurance

##### (1) Insured depository institutions

###### (A) In general

Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

###### (B) Statement to be included

Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

##### (2) Regulations

The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

##### (3) Penalties

For each day that an insured depository institution continues to violate paragraph (1) or any regulation issued under paragraph (2), it shall be subject to a penalty of not more than \$100, which the Corporation may recover for its use.

##### (4) False advertising, misuse of FDIC names, and misrepresentation to indicate insured status

###### (A) Prohibition on false advertising and misuse of FDIC names

No person may represent or imply that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation—

(i) by using the terms “Federal Deposit”, “Federal Deposit Insurance”, “Federal Deposit Insurance Corporation”, any combination of such terms, or the abbreviation “FDIC” as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) by using such terms or any other terms, sign, or symbol as part of an advertisement, solicitation, or other document.

###### (B) Prohibition on misrepresentations of insured status

No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is insured, under this

chapter, if such deposit liability, obligation, certificate, or share is not so insured; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured under this chapter, if such deposit liability, obligation, certificate, or share is not so insured, to the extent or in the manner represented.

**(C) Authority of the appropriate Federal banking agency**

The appropriate Federal banking agency shall have enforcement authority in the case of a violation of this paragraph by any person for which the agency is the appropriate Federal banking agency, or any institution-affiliated party thereof.

**(D) Corporation authority if the appropriate Federal banking agency fails to follow recommendation**

**(i) Recommendation**

The Corporation may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 1818 of this title for purposes of enforcement of this paragraph with respect to any person for which the agency is the appropriate Federal banking agency or any institution-affiliated party thereof.

**(ii) Agency response**

If the appropriate Federal banking agency does not, within 30 days of the date of receipt of a recommendation under clause (i), take the enforcement action with respect to this paragraph recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the situation presented, the Corporation may take the recommended enforcement action against such person or institution-affiliated party.

**(E) Additional authority**

In addition to its authority under subparagraphs (C) and (D), for purposes of this paragraph, the Corporation shall have, in the same manner and to the same extent as with respect to a State nonmember insured bank—

(i) jurisdiction over—

(I) any person other than a person for which another agency is the appropriate Federal banking agency or any institution-affiliated party thereof; and

(II) any person that aids or abets a violation of this paragraph by a person described in subclause (I); and

(ii) for purposes of enforcing the requirements of this paragraph, the authority of the Corporation under—

(I) section 1820(c) of this title to conduct investigations; and

(II) subsections (b), (c), (d) and (i) of section 1818 of this title to conduct enforcement actions.

**(F) Other actions preserved**

No provision of this paragraph shall be construed as barring any action otherwise

available, under the laws of the United States or any State, to any Federal or State agency or individual.

**(b) Payment of dividends by defaulting depository institutions**

No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both: *Provided*, That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply if the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

**(c) Merger transactions; consent of banking agencies; emergency approval; notice; uniform standards; antitrust actions; review de novo; limitations; report to Congress; money laundering; applicability**

(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be “deposits” except for the proviso in section 1813(l)(5) of this title) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a Federal savings association;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank; and

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank or a State savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1)

or (2) (referred to hereafter in this subsection as a “merger transaction”) shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) REPORTS ON COMPETITIVE FACTORS.—

(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), before acting on any application for approval of a merger transaction, the responsible agency shall—

(i) request a report on the competitive factors involved from the Attorney General of the United States; and

(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

(B) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

(i) not later than 30 calendar days after the date on which the Attorney General received the request; or

(ii) not later than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

(C) EXCEPTIONS.—A responsible agency may not be required to request a report under subparagraph (A) if—

(i) the responsible agency finds that it must act immediately in order to prevent the probable failure of 1 of the insured depository institutions involved in the merger transaction; or

(ii) the merger transaction involves solely an insured depository institution and 1 or more of the affiliates of such depository institution.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects

of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency’s approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of title 15, but nothing in this subsection shall exempt any bank or savings association resulting from a

merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved, may appear as a part of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act), the Act of October 15, 1914 (the Clayton Act), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved;

(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

(C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) MONEY LAUNDERING.—In every case, the responsible agency, shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.

(12) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which

the Corporation provides assistance under section 1823 of this title.

(C) In this paragraph—

(i) the term "interstate merger transaction" means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

(ii) the term "home State" means—

(I) with respect to a national bank, the State in which the main office of the bank is located;

(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date,<sup>1</sup> the Comptroller of the Currency) of the Federal savings association is located.

**(d) Branch banks**

(1) No State nonmember insured bank shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 1816 of this title.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

**(3) EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES.—**

(A) IN GENERAL.—Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in section 1831u(f)(4)<sup>1</sup> of this title) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 1823(f), 1823(k), or 1831u of this title.

(B) RETENTION OF BRANCHES.—In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in section 1831u(f)(4)<sup>1</sup> of this title) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if—

(i) the bank had no branches in such State; or

<sup>1</sup> See References in Text note below.

(ii) the branch resulted from—

(I) an interstate merger transaction approved pursuant to section 1831u of this title; or

(II) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Corporation under section 1823(c) of this title.

(4) STATE “OPT-IN” ELECTION TO PERMIT INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

(A) IN GENERAL.—Subject to subparagraph

(B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank’s home State) in which the bank does not maintain a branch if—

(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and

(ii) the conditions established in, or made applicable to this paragraph by, subparagraph (B) are met.

(B) CONDITIONS ON ESTABLISHMENT AND OPERATION OF INTERSTATE BRANCH.—

(i) ESTABLISHMENT.—An application by an insured State nonmember bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for a merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

(ii) OPERATION.—Subsections (c) and (d)(2) of section 1831u of this title shall apply with respect to each branch of an insured State nonmember bank which is established and operated pursuant to an application approved under this paragraph in the same manner and to the same extent such provisions of such section apply to a branch of a State bank which resulted from a merger transaction under such section 1831u of this title.

(C) “DE NOVO BRANCH” DEFINED.—For purposes of this paragraph, the term “de novo branch” means a branch of a State bank which—

(i) is originally established by the State bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(D) “HOME STATE” DEFINED.—The term “home State” means the State by which a State bank is chartered.

(E) “HOST STATE” DEFINED.—The term “host State” means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

**(e) Indemnity insurance**

The Corporation may require any insured depository institution to provide protection and

indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.<sup>2</sup>

**(f) Publication of reports**

Whenever any insured depository institution (except a national bank), after written notice of the recommendations of the Corporation based on a report of examination of such insured depository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: *Provided*, That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

**(g) [Repealed]**

**(h) Penalty for failure to timely pay assessments**

**(1) In general**

Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

**(2) Exception in case of dispute**

Paragraph (1) shall not apply if—

(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

**(3) Special rule for small assessment amounts**

If the amount of the assessment which an insured depository institution fails or refuses to pay is less than \$10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed \$100 for each day that such violation continues.

**(4) Authority to modify or remit penalty**

The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.

**(i) Reduction or retirement of capital stock, notes, or debentures; conversion of insured Federal depository institutions to insured State banks or noninsured institutions; consent of banking agencies; applicability**

(1) No insured State nonmember bank shall, without the prior consent of the Corporation, re-

<sup>2</sup>So in original. Probably should be “insured depository institution.”

duce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank;

(B) the Corporation if the resulting bank is to be a State nonmember insured bank; and

(C) the Corporation if the resulting institution is to be an insured State savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider—

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character and fitness of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this chapter.

**(j) Restrictions on transactions with affiliates and insiders**

**(1) Transactions with affiliates**

**(A) In general**

Sections 371c and 371c-1 of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

**(B) "Affiliate" defined**

For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 371c and 371c-1 of this title) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

**(2) Extensions of credit to officers, directors, and principal shareholders**

Sections 375a and 375b of this title shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

**(3) Avoiding extraterritorial application to foreign banks**

**(A) Transactions with affiliates**

Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

**(B) Extensions of credit to officers, directors, and principal shareholders**

Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign

bank has an insured branch, but shall apply with respect to the insured branch.

**(C) "Foreign bank" defined**

For purposes of this paragraph, the term "foreign bank" has the same meaning as in section 3101(7) of this title.

**(k) Authority to regulate or prohibit certain forms of benefits to institution-affiliated parties**

**(1) Golden parachutes and indemnification payments**

The Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment.

**(2) Factors to be taken into account**

The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or covered company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

(i) the insolvency of the depository institution or covered company;

(ii) the appointment of a conservator or receiver for the depository institution; or

(iii) the troubled condition of the depository institution (as defined in the regulations prescribed pursuant to section 1831i(f) of this title).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18; or

(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or covered company, and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

**(3) Certain payments prohibited**

No insured depository institution or covered company may prepay the salary or any liabil-

ity or legal expense of any institution-affiliated party if such payment is made—

- (A) in contemplation of the insolvency of such institution or covered company or after the commission of an act of insolvency; and
- (B) with a view to, or has the result of—
  - (i) preventing the proper application of the assets of the institution to creditors; or
  - (ii) preferring one creditor over another.

**(4) “Golden parachute payment” defined**

For purposes of this subsection—

**(A) In general**

The term “golden parachute payment” means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or covered company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or covered company that—

- (i) is contingent on the termination of such party’s affiliation with the institution or covered company; and
- (ii) is received on or after the date on which—
  - (I) the insured depository institution or covered company, or any insured depository institution subsidiary of such covered company, is insolvent;
  - (II) any conservator or receiver is appointed for such institution;
  - (III) the institution’s appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title);
  - (IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or
  - (V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

**(B) Certain payments in contemplation of an event**

Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

**(C) Certain payments not included**

The term “golden parachute payment” shall not include—

- (i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of title 26 or other nondiscriminatory benefit plan;
- (ii) any payment made pursuant to a bona fide deferred compensation plan or

arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

**(5) Other definitions**

For purposes of this subsection—

**(A) Indemnification payment**

Subject to paragraph (6), the term “indemnification payment” means any payment (or any agreement to make any payment) by any insured depository institution or covered company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

- (i) is assessed a civil money penalty;
- (ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or
- (iii) is required to take any affirmative action described in section 1818(b)(6) of this title with respect to such institution.

**(B) Liability or legal expense**

The term “liability or legal expense” means—

- (i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;
- (ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and
- (iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

**(C) Payment**

The term “payment” includes—

- (i) any direct or indirect transfer of any funds or any asset; and
- (ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—
  - (I) the determination, after such date, of the liability for the payment of such amount; or
  - (II) the liquidation, after such date, of the amount of such payment.

**(D) Covered company**

The term “covered company” means any depository institution holding company (including any company required to file a report under section 1843(f)(6) of this title), or any other company that controls an insured depository institution.

**(6) Certain commercial insurance coverage not treated as covered benefit payment**

No provision of this subsection shall be construed as prohibiting any insured depository

institution or covered company, from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or covered company which is described in paragraph (5)(A).

**(l) Acquisition of foreign banks or entities**

When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

**(m) Activities of savings associations and their subsidiaries**

**(1) Procedures**

When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

(A) shall notify the Corporation or the Comptroller of the Currency, as appropriate, not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency.

**(2) Enforcement powers**

With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Comptroller of the Currency, as appropriate, shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 1818 of this title; and

(B) the Corporation or the Comptroller of the Currency, as appropriate, may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or con-

trol of, or its relationship to, the subsidiary—

(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

(ii) is inconsistent with sound banking principles or with the purposes of this chapter.

Upon making any such determination, the Corporation or the Office of the Comptroller of the Currency, as appropriate, shall have authority to order the insured savings association to divest itself of control of the subsidiary. The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.

**(3) Activities incompatible with deposit insurance**

**(A) In general**

The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Deposit Insurance Fund. Prior to adopting any such regulation, the Corporation shall, in the case of a Federal savings association, consult with the Comptroller of the Currency and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no savings association may engage in the activity directly.

**(B) Authority of Comptroller of the Currency**

This section does not limit the authority of the Comptroller of the Currency to issue regulations to promote safety and soundness, or to enforce compliance as to Federal savings associations with other applicable laws.

**(C) Additional authority of FDIC to prevent serious risks to insurance fund**

Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Deposit Insurance Fund.

**(4) “Subsidiary” defined**

As used in this subsection, the term “subsidiary” does not include an insured depository institution.

**(5) Applicability to certain savings banks**

Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or



(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

**(n) Calculation of capital**

No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intangible asset was acquired after April 12, 1989, except to the extent permitted under section 1464(t) of this title.

**(o) Real estate lending**

**(1) Uniform regulations**

Not more than 9 months after December 19, 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

(A) secured by liens on interests in real estate; or

(B) made for the purpose of financing the construction of a building or other improvements to real estate.

**(2) Standards**

**(A) Criteria**

In prescribing standards under paragraph (1), the agencies shall consider—

- (i) the risk posed to the Deposit Insurance Fund by such extensions of credit;
- (ii) the need for safe and sound operation of insured depository institutions; and
- (iii) the availability of credit.

**(B) Variations permitted**

In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

- (i) as may be required by Federal statute;
- (ii) as may be warranted, based on the risk to the Deposit Insurance Fund; or
- (iii) as may be warranted, based on the safety and soundness of the institutions.

**(3) Loan evaluation standard**

No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution's safety and soundness.

**(4) Effective date**

The regulations adopted under paragraph (1) shall become effective not later than 15 months after December 19, 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

**(p) Periodic review of capital standards**

Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to

determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the Deposit Insurance Fund, consistent with section 1831o of this title.

**(q) Sovereign risk**

Section 633 of this title shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

**(r) Subsidiary depository institutions as agents for certain affiliates**

**(1) In general**

Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

**(2) Bank acting as agent is not a branch**

Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

**(3) Prohibitions on activities**

A depository institution may not—

(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

**(4) Existing authority not affected**

No provision of this subsection shall be construed as affecting—

(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

**(5) Agency relationship required to be consistent with safe and sound banking practices**

An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

**(6) Affiliated insured savings associations**

An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—

(A) any State in which—

- (i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

(B) any State in which—

(i) the bank is not expressly prohibited from operating a branch under a State law described in section 1831u(a)(2) of this title; and

(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

**(s) Prohibition on certain affiliations**

**(1) In general**

No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

**(2) Exception for members of a Federal home loan bank**

Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

**(3) Routine business financing**

Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

**(4) Student loans**

**(A) In general**

This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that—

(i) the reorganization of such Association in accordance with section 1087-3 of title 20 will not be adversely affected by the arrangement;

(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: *Provided*, That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years;

(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

(iv) the operations of the Association will be separate from the operations of the depository institution; and

(v) until the “dissolution date” (as that term is defined in section 1087-3 of title 20) has occurred, such depository institution will not use the trade name or service

mark “Sallie Mae” in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that—

(I) the depository institution is the only institution offering such product or service using the “Sallie Mae” name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

**(B) Terms and conditions**

In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including—

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

**(C) Additional limitations**

In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association’s “investment portfolio” shall not at any time exceed the lesser of—

(i) the value of such portfolio on the date of the enactment of this subsection; or

(ii) the value of such portfolio on the date such an arrangement is consummated. The term “investment portfolio” shall mean all investments shown on the consolidated balance sheet of the Association other than—

(I) any instrument or assets described in section 1087-2(d) of title 20, as such section existed on the day before the date of the repeal of such section;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

**(D) Enforcement**

The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 1087-3 of title 20.

**(E) Definitions**

For purposes of this paragraph, the following definition shall apply—

**(i) Association; Holding Company**

Notwithstanding any provision in section 1813 of this title, the terms “Association” and “Holding Company” have the same meanings as in section 1087-3(i) of title 20.

**(ii) Secretary**

The term “Secretary” means the Secretary of the Treasury.

**(5) “Government-sponsored enterprise” defined**

For purposes of this subsection, the term “Government-sponsored enterprise” has the

meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

**(t) Recordkeeping requirements**

**(1) Requirements**

Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4) and (5) of section 78c(a) of title 15. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

**(2) Availability to Commission; confidentiality**

Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

**(3) Definition**

As used in this subsection the term “Commission” means the Securities and Exchange Commission.

**(u) Limitation on claims**

**(1) In general**

No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital; and

(B) for that portion of the transfer that is made by an entity covered by section 1844(g) of this title or section 1831v of this title, the Federal banking agency has followed the procedure set forth in such section.

**(2) Definition of claim**

For purposes of paragraph (1), the term “claim”—

(A) means a cause of action based on Federal or State law that—

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

**(v) Loans by insured institutions on their own stock**

**(1) General prohibition**

No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

**(2) Exclusion**

For purposes of this subsection, an insured depository institution shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

**(w) Written employment references may contain suspicions of involvement in illegal activity**

**(1) Authority to disclose information**

Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

**(2) Information not required**

Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

**(3) Malicious intent**

Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution, under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

**(4) Definition**

For purposes of this subsection, the term “insured depository institution” includes any uninsured branch or agency of a foreign bank.

**(x) Privileges not affected by disclosure to banking agency or supervisor**

**(1) In general**

The submission by any person of any information to the Bureau of Consumer Financial

Protection, any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Bureau, agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Bureau, agency, supervisor, or authority.

**(2) Rule of construction**

No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to the Bureau of Consumer Financial Protection, any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.

**(y) State lending limit treatment of derivatives transactions**

An insured State bank may engage in a derivative transaction, as defined in section 84(b)(3) of this title, only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.

**(z) General prohibition on sale of assets**

**(1) In general**

An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 375b of this title), unless—

(A) the transaction is on market terms; and

(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

**(2) Rulemaking**

The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.

(Sept. 21, 1950, ch. 967, §2[18], 64 Stat. 891; Pub. L. 86-463, May 13, 1960, 74 Stat. 129; Pub. L. 87-827, §2, Oct. 15, 1962, 76 Stat. 953; Pub. L. 89-79, §2, July 21, 1965, 79 Stat. 244; Pub. L. 89-356, §1, Feb. 21, 1966, 80 Stat. 7; Pub. L. 89-485, §12(c), July 1, 1966, 80 Stat. 242; Pub. L. 89-597, §3, Sept. 21, 1966, 80 Stat. 824; Pub. L. 90-505, §2(b), Sept. 21, 1968,

82 Stat. 856; Pub. L. 91-151, title I, §§2(a), 4(b), (c), Dec. 23, 1969, 83 Stat. 372, 374, 375; Pub. L. 93-100, §3, Aug. 16, 1973, 87 Stat. 342; Pub. L. 93-495, title I, §106, Oct. 28, 1974, 88 Stat. 1505; Pub. L. 93-501, title I, §102(a), title III, §302, Oct. 29, 1974, 88 Stat. 1558, 1560; Pub. L. 95-369, §6(c)(25)-(28), Sept. 17, 1978, 92 Stat. 620; Pub. L. 95-630, title I, §108, title III, §§301(b), (c), 306, Nov. 10, 1978, 92 Stat. 3664, 3675, 3677; Pub. L. 96-104, title II, §202, Nov. 5, 1979, 93 Stat. 792; Pub. L. 96-161, title I, §101(b), title II, §209, Dec. 28, 1979, 93 Stat. 1233, 1239; Pub. L. 96-221, title II, §207(b)(2), (3), title III, §§302(b), 307, title V, §529, Mar. 31, 1980, 94 Stat. 144, 146, 147, 168; Pub. L. 97-320, title I, §113(n), (o), title IV, §§410(d), 423, 424(b), (d)(10), (e), Oct. 15, 1982, 96 Stat. 1474, 1520, 1522, 1523; Pub. L. 100-86, title I, §§102(b), 103, title V, §504(b), Aug. 10, 1987, 101 Stat. 566, 632; Pub. L. 101-73, title II, §§201, 221, title IX, §§905(d), 907(c), Aug. 9, 1989, 103 Stat. 187, 266, 460, 466; Pub. L. 101-647, title XXV, §2523(a), Nov. 29, 1990, 104 Stat. 4868; Pub. L. 102-242, title III, §§304(a), 305(a), 306(k), Dec. 19, 1991, 105 Stat. 2354, 2359; Pub. L. 102-550, title XVI, §1605(a)(9), Oct. 28, 1992, 106 Stat. 4086; Pub. L. 103-325, title III, §§321(b), 324, 326(b)(1), title VI, §602(a)(44)-(50), Sept. 23, 1994, 108 Stat. 2226, 2227, 2229, 2290; Pub. L. 103-328, title I, §§101(d), 102(b)(3)(A), 103(b), Sept. 29, 1994, 108 Stat. 2342, 2350, 2353; Pub. L. 104-208, div. A, title II, §§2615(b), 2704(d)(14)(U), (V), Sept. 30, 1996, 110 Stat. 3009-479, 3009-494; Pub. L. 105-277, div. H, §2, Oct. 21, 1998, 112 Stat. 2681-854; Pub. L. 106-102, title II, §204, title VII, §730, Nov. 12, 1999, 113 Stat. 1391, 1476; Pub. L. 106-569, title XII, §1207(b), Dec. 27, 2000, 114 Stat. 3034; Pub. L. 107-56, title III, §§327(b)(1), 355, Oct. 26, 2001, 115 Stat. 319, 324; Pub. L. 108-386, §8(a)(5), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 108-458, title VI, §6203(j), Dec. 17, 2004, 118 Stat. 3747; Pub. L. 109-171, title II, §§2102(b), 2104(c), Feb. 8, 2006, 120 Stat. 9, 13; Pub. L. 109-173, §§2(c)(2), 8(a)(28)-(30), Feb. 15, 2006, 119 Stat. 3602, 3615; Pub. L. 109-351, title VI, §§606, 607(a), title VII, §§702(b), 704, Oct. 13, 2006, 120 Stat. 1981, 1982, 1985, 1986; Pub. L. 110-315, title IV, §438(b), Aug. 14, 2008, 122 Stat. 3258; Pub. L. 110-343, div. A, title I, §126(a), (d), Oct. 3, 2008, 122 Stat. 3793, 3796; Pub. L. 111-203, title III, §363(7), title VI, §§604(f), 611(a), 613(b), 615(a), 623(a), 627(a)(3), July 21, 2010, 124 Stat. 1553, 1602, 1612, 1614, 1634, 1640; Pub. L. 112-215, §1(2), Dec. 20, 2012, 126 Stat. 1589.)

REFERENCES IN TEXT

Act of July 2, 1890 (the Sherman Antitrust Act), referred to in subsec. (c)(8), is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of the Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (the Clayton Act), referred to in subsec. (c)(8), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The date of enactment of this subsection, referred to in subsec. (c)(10), probably means the date of enactment of Pub. L. 93-495, which was approved Oct. 28, 1974.

The transfer date, referred to in subsec. (c)(13)(C)(ii)(III), probably means the transfer date defined in section 5301 of this title.

Section 1831u of this title, referred to in subsec. (d)(3), was subsequently amended, and subsec. (f)(4) of section 1831u no longer defines the term “home State”. However, such term is defined elsewhere in that section.

The date of the enactment of this subsection, referred to in subsec. (s)(4)(C)(i), probably means the date of enactment of Pub. L. 105-277, which added par. (4) of subsec. (s) and redesignated former par. (4) as (5), and which was approved Oct. 21, 1998.

For the date of the repeal of section 1087-2(d) of title 20, referred to in subsec. (s)(4)(C)(ii)(I), see section 101(e) [title VI, §602(d)(2)] of div. A of Pub. L. 104-208, set out as an Effective Date of 1996 Amendment note under section 1087-2 of Title 20, Education.

Section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (s)(5), is section 1404(e)(1)(A) of Pub. L. 101-73, which is set out as a note under section 1811 of this title.

#### CODIFICATION

Section 202 of Pub. L. 96-104, cited as a credit to this section, was repealed by section 212 of Pub. L. 96-161, effective at the close of Dec. 27, 1979. The amendment of this section by that repealed provision, described in the 1979 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 212 of Pub. L. 96-161. See Savings Provisions note, describing the provisions of section 212 of Pub. L. 96-161, set out under section 85 of this title.

Section 302 of Pub. L. 93-501, cited as a credit to this section, was repealed by Pub. L. 96-104, §1, Nov. 5, 1979, 93 Stat. 789. The amendment of this section by that repealed provision, described in the 1974 Amendment note set out under this section, shall continue in effect for limited purposes pursuant to section 1 of Pub. L. 96-104. See Savings Provisions note, describing the provisions of section 1 of Pub. L. 96-104, set out under section 85 of this title.

#### PRIOR PROVISIONS

Subsecs. (a) to (f) and former subsec. (g) are derived from subsec. (v)(2) to (8) of former section 264 of this title. See Codification note set out under section 1811 of this title.

#### AMENDMENTS

2012—Subsec. (x)(1). Pub. L. 112-215 inserted “the Bureau of Consumer Financial Protection,” before “any Federal banking agency” and substituted “such Bureau, agency” for “such agency” in two places.

Subsec. (x)(2)(B). Pub. L. 112-215, §1(2)(A), inserted “the Bureau of Consumer Financial Protection,” before “any Federal banking agency”.

2010—Subsec. (c)(2)(A). Pub. L. 111-203, §363(7)(A)(i), inserted “or a Federal savings association” before the semicolon.

Subsec. (c)(2)(B). Pub. L. 111-203, §363(7)(A)(ii), inserted “and” at end.

Subsec. (c)(2)(C). Pub. L. 111-203, §363(7)(A)(iii), substituted “or a State savings association.” for “(except a savings bank supervised by the Director of the Office of Thrift Supervision); and”.

Subsec. (c)(2)(D). Pub. L. 111-203, §363(7)(A)(iv), struck out subpar. (D) which read as follows: “the Director of the Office of Thrift Supervision if the acquiring, assuming, or resulting institution is to be a savings association.”

Subsec. (c)(5). Pub. L. 111-203, §604(f), substituted “the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system” for “and the convenience and needs of the community to be served” in concluding provisions.

Subsec. (g). Pub. L. 111-203, §627(a)(3), amended subsec. (g) generally to read “[Repealed]”. Prior to amendment, subsec. (g) related to interest or dividend on demand deposits, definitions, and regulation of interest rates.

Subsec. (g)(1). Pub. L. 111-203, §363(7)(B), substituted “the Comptroller of the Currency” for “the Director of the Office of Thrift Supervision”.

Subsec. (i)(2)(C). Pub. L. 111-203, §363(7)(C), substituted “Corporation” for “Director of the Office of Thrift Supervision”.

Subsec. (m)(1)(A). Pub. L. 111-203, §363(7)(D)(i)(I), substituted “or the Comptroller of the Currency, as appropriate,” for “and the Director of the Office of Thrift Supervision”.

Subsec. (m)(1)(B). Pub. L. 111-203, §363(7)(D)(i)(II), substituted “of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency” for “and orders of the Director of the Office of Thrift Supervision”.

Subsec. (m)(2)(A). Pub. L. 111-203, §363(7)(D)(ii)(I), substituted “Comptroller of the Currency, as appropriate,” for “Director of the Office of Thrift Supervision”.

Subsec. (m)(2)(B). Pub. L. 111-203, §363(7)(D)(ii)(II), in introductory provisions, substituted “Corporation or the Comptroller of the Currency, as appropriate,” for “Director of the Office of Thrift Supervision” and, in concluding provisions, substituted “the Office of the Comptroller of the Currency, as appropriate,” for “the Director of the Office of Thrift Supervision” and “The Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.” for “The Director of the Office of Thrift Supervision may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Director may deem appropriate.”

Subsec. (m)(3)(A). Pub. L. 111-203, §363(7)(D)(iii)(I), inserted “, in the case of a Federal savings association,” before “consult with” and substituted “Comptroller of the Currency” for “Director of the Office of Thrift Supervision”.

Subsec. (m)(3)(B). Pub. L. 111-203, §363(7)(D)(iii)(II), in heading, substituted “Comptroller of the Currency” for “Director” and, in text, substituted “Comptroller of the Currency” for “Office of Thrift Supervision”, inserted a comma after “soundness”, and inserted “as to Federal savings associations” after “compliance”.

Subsec. (c)(13). Pub. L. 111-203, §623(a), added par. (13).

Subsec. (d)(4)(A)(i). Pub. L. 111-203, §613(b), amended cl. (i) generally. Prior to amendment, text read as follows: “there is in effect in the host State a law that—  
“(I) applies equally to all banks; and  
“(II) expressly permits all out-of-State banks to establish de novo branches in such State; and”.

Subsec. (y). Pub. L. 111-203, §611(a), which directed amendment of section by adding subsec. (y) at the end, was executed by adding subsec. (y) after subsec. (x), as the probable intent of Congress, even though Pub. L. 111-203, §615(a), which added subsec. (z) at the end, was effective earlier. See Amendment note and Effective Date of 2010 Amendment note below.

Subsec. (z). Pub. L. 111-203, §615(a), added subsec. (z).  
2008—Subsec. (a). Pub. L. 110-343, §126(d)(2), substituted “Representations of deposit insurance” for “Insurance logo” in heading.

Subsec. (a)(3). Pub. L. 110-343, §126(d)(1), substituted “violate paragraph (1)” for “violate this subsection” and “under paragraph (2)” for “under this subsection”.

Subsec. (a)(4). Pub. L. 110-343, §126(a), added par. (4).

Subsec. (s)(4)(C)(ii)(I). Pub. L. 110-315 inserted “, as such section existed on the day before the date of the repeal of such section” after “section 1087-2(d) of title 20”.

2006—Subsec. (a). Pub. L. 109-173, §2(c)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to the insurance logo and signs to be displayed at insured savings associations and insured banks.

Subsec. (c)(4). Pub. L. 109-351, §606(a), inserted heading and amended text generally. Prior to amendment,

text read as follows: "In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks or savings associations involved, shall request reports on the competitive factors involved from the Attorney General and the other Federal banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other Federal banking agencies that an emergency exists requiring expeditious action. Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction."

Subsec. (c)(6). Pub. L. 109-351, §606(b)(2), substituted, in penultimate sentence, "If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency." for "If the agency has advised the Attorney General and the other Federal banking agencies of the existence of an emergency requiring expeditious actions and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency."

Pub. L. 109-351, §606(b)(1), substituted, in second sentence, "insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has" for "banks or savings associations involved and reports on the competitive factors have".

Subsec. (h). Pub. L. 109-171, §2104(c), amended subsec. (h) generally. Prior to amendment, text read as follows: "Any insured depository institution which willfully fails or refuses to file any certified statement or pay any assessment required under this chapter shall be subject to a penalty of not more than \$100 for each day that such violations continue, which penalty the Corporation may recover for its use: *Provided*, That this subsection shall not be applicable under the circumstances stated in the proviso of subsection (b) of this section."

Subsec. (k)(2)(A). Pub. L. 109-351, §704(1), substituted "or covered company" for "or depository institution holding company".

Subsec. (k)(2)(B). Pub. L. 109-351, §704(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for the insolvency of the depository institution or depository institution holding company, the appointment of a conservator or receiver for the depository institution, or the depository institution's troubled condition (as defined in the regulations prescribed pursuant to section 1831i(f) of this title)."

Subsec. (k)(2)(F). Pub. L. 109-351, §704(3), substituted "covered company," for "depository institution holding company" in introductory provisions.

Subsec. (k)(3). Pub. L. 109-351, §704(4), substituted "covered company" for "depository institution holding company" in introductory provisions.

Subsec. (k)(3)(A). Pub. L. 109-351, §704(5), substituted "covered company" for "holding company".

Subsec. (k)(4)(A). Pub. L. 109-351, §704(6), substituted "covered company for the benefit" for "depository institution holding company for the benefit" and "or covered company that—" for "or holding company that—" in introductory provisions, "covered company;" for "holding company;" in cl. (i), and "covered company,"

for "depository institution holding company," and "such covered company" for "such holding company" in cl. (ii)(I).

Subsec. (k)(5)(A). Pub. L. 109-351, §704(7), substituted "covered company" for "depository institution holding company" in introductory provisions.

Subsec. (k)(5)(D). Pub. L. 109-351, §704(8), added subpar. (D).

Subsec. (k)(6). Pub. L. 109-351, §704(9), substituted "covered company," for "depository institution holding company" and "or covered company which is described" for "or holding company which is described".

Subsec. (m)(3). Pub. L. 109-173, §8(a)(28), in subpar. (A) substituted "Deposit Insurance Fund" for "Savings Association Insurance Fund" and "savings association" for "Savings Association Insurance Fund member" and in subpar. (C) substituted "Deposit Insurance Fund" for "Savings Association Insurance Fund or the Bank Insurance Fund".

Pub. L. 109-171, §2102(b), repealed Pub. L. 104-208, §2704(d)(14)(U). See 1996 Amendment note below.

Subsec. (o)(2). Pub. L. 109-173, §8(a)(29), substituted "Deposit Insurance Fund" for "deposit insurance funds" in subpar. (A)(i) and for "deposit insurance fund" in subpar. (B)(ii).

Subsec. (p). Pub. L. 109-173, §8(a)(30), substituted "Deposit Insurance Fund" for "deposit insurance funds".

Pub. L. 109-171, §2102(b), repealed Pub. L. 104-208, §2704(d)(14)(V). See 1996 Amendment note below.

Subsec. (u)(1). Pub. L. 109-351, §702(b), inserted "and" at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "the insured depository institution is undercapitalized (as defined in section 1831o of this title); and".

Subsec. (x). Pub. L. 109-351, §607(a), added subsec. (x). 2004—Subsec. (c)(2)(A). Pub. L. 108-386, §8(a)(5)(A), struck out "or a District bank" after "national bank".

Subsec. (c)(2)(B). Pub. L. 108-386, §8(a)(5)(B), struck out "(except a District bank)" after "State member bank".

Subsec. (c)(2)(C). Pub. L. 108-386, §8(a)(5)(C), struck out "a District Bank or" before "a savings bank".

Subsec. (d)(1). Pub. L. 108-386, §8(a)(5)(D), struck out "(except a District bank)" after "nonmember insured bank" in two places.

Subsec. (f). Pub. L. 108-386, §8(a)(5)(E), struck out "or a District bank" after "national bank".

Subsec. (i)(1). Pub. L. 108-386, §8(a)(5)(F), struck out "(except a District bank)" after "State nonmember bank".

Subsec. (i)(2)(A) to (D). Pub. L. 108-386, §8(a)(5)(G)–(I), redesignated subpars. (B) to (D) as (A) to (C), respectively, struck out "(except a District bank)" before semicolon in subpars. (A) and (B), and struck out former subpar. (A), which read as follows: "the Comptroller of the Currency if the resulting bank is to be a District bank;".

Subsec. (w)(3). Pub. L. 108-458 inserted comma after "agent of such institution".

2001—Subsec. (c)(11), (12). Pub. L. 107-56, §327(b)(1), added par. (11) and redesignated former par. (11) as (12).

Subsec. (w). Pub. L. 107-56, §355, added subsec. (w).

2000—Subsecs. (t), (u). Pub. L. 106-569, §1207(b)(1), redesignated subsec. (t), relating to limitation on claims, as (u).

Subsec. (v). Pub. L. 106-569, §1207(b)(2), added subsec. (v).

1999—Subsec. (t). Pub. L. 106-102, §730, added subsec. (t) relating to limitation on claims.

Pub. L. 106-102, §204, which directed amendment of section by adding at end subsec. (t) relating to record-keeping requirements, was executed by making the addition after subsec. (s) to reflect the probable intent of Congress.

1998—Subsec. (s)(4), (5). Pub. L. 105-277 redesignated par. (4) as (5) and added par. (4).

1996—Subsec. (m)(3). Pub. L. 104-208, §2704(d)(14)(U), which directed substitution of "Deposit Insurance Fund" for "Savings Association Insurance Fund" wher-

ever appearing and striking of “or the Bank Insurance Fund” in subpar. (C), was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

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

Subsec. (s). Pub. L. 104-208, §2615(b), added subsec. (s). 1994—Subsec. (b). Pub. L. 103-325, §602(a)(44), substituted “if the insured depository institution deposits” for “, if such bank shall deposit”.

Subsec. (c)(1)(B). Pub. L. 103-325, §602(a)(45), inserted “or” at end.

Subsec. (c)(4). Pub. L. 103-325, §§324, 602(a)(46), substituted “other Federal banking agencies” for “other two banking agencies” in two places and inserted at end “Notwithstanding the preceding sentence, a banking agency shall not be required to file a report requested by the responsible agency under this paragraph if such banking agency advises the responsible agency by the applicable date under the preceding sentence that the report is not necessary because none of the effects described in paragraph (5) are likely to occur as a result of the transaction.”

Subsec. (c)(6). Pub. L. 103-325, §§321(b), 602(a)(47), substituted “other Federal banking agencies” for “other two banking agencies” and inserted before period at end “or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval”.

Subsec. (c)(9). Pub. L. 103-325, §602(a)(48), substituted “with—” for “with the following information:”.

Subsec. (d)(3). Pub. L. 103-328, §102(b)(3)(A), added par. (3).

Subsec. (d)(4). Pub. L. 103-328, §103(b), added par. (4).

Subsec. (f). Pub. L. 103-325, §602(a)(49), substituted “such insured depository institution” for “such bank” and “the insured depository institution” for “the bank”.

Subsec. (k)(4)(A)(ii)(II). Pub. L. 103-325, §602(a)(50), struck out “or” at end.

Subsec. (q). Pub. L. 103-325, §326(b)(1), added subsec. (q).

Subsec. (r). Pub. L. 103-328, §101(d), added subsec. (r). 1992—Subsec. (p). Pub. L. 102-550 redesignated subsec. (o), relating to periodic review of capital standards, as (p).

1991—Subsec. (j). Pub. L. 102-242, §306(k), amended subsec. (j) generally, revising and restating as pars. (1) to (3) provisions of former pars. (1) to (6).

Subsec. (o). Pub. L. 102-242, §305(a), added subsec. (o) relating to periodic review of capital standards.

Pub. L. 102-242, §304(a), added subsec. (o) relating to real estate lending.

1990—Subsec. (k). Pub. L. 101-647 added subsec. (k).

1989—Subsec. (a). Pub. L. 101-73, §221(1), substituted heading and pars. (1) to (3) for first two sentences which read as follows: “Every insured bank shall display at each place of business maintained by it a sign or signs, and shall include a statement to the effect that its deposits are insured by the Corporation in all of its advertisements: *Provided*, That the Board of Directors may exempt from this requirement advertisements which do not relate to deposits or when it is impractical to include such statement therein. The Board of Directors shall prescribe by regulation the forms of such signs and the manner of display and the substance of such statements and the manner of use.”

Pub. L. 101-73, §201(a), substituted “insured depository institution” for “insured bank”.

Subsecs. (b), (c)(1), (2). Pub. L. 101-73, §201(a), substituted “insured depository institution” for “insured bank” wherever appearing.

Subsec. (c)(2)(C), (D). Pub. L. 101-73, §221(2)(A), added subpars. (C) and (D) and struck out former subpar. (C)

which read as follows: “the Corporation if the acquiring, assuming or resulting bank is to be a nonmember insured bank (except a District bank).”

Subsec. (c)(3). Pub. L. 101-73, §221(2)(C), (D), substituted “banks or savings associations” for “banks” wherever appearing and “default” for “failure”.

Subsec. (c)(4), (6). Pub. L. 101-73, §221(2)(C), substituted “banks or savings associations” for “banks”.

Subsec. (c)(7)(C), (9)(A). Pub. L. 101-73, §221(2)(C), substituted “bank or savings association” for “bank”.

Subsec. (c)(10). Pub. L. 101-73, §201(a), substituted “insured depository institution” for “insured bank”.

Subsec. (c)(12). Pub. L. 101-73, §221(2)(B), struck out par. (12) which read as follows: “The provisions of this subsection shall not apply to any transaction where the acquiring, assuming, or resulting institution is an insured Federal savings bank or an institution insured by the Federal Savings and Loan Insurance Corporation, except that any insured bank involved in the transaction shall notify the Corporation in writing at least 30 days prior to consummation of the transaction and, if any approval by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation is required in connection therewith, such approving authority shall provide the Corporation with notification of the application for approval, shall consult with the Corporation before disposing of the application, and shall provide notification to the Corporation of the determination with respect to said application.”

Subsecs. (e), (f). Pub. L. 101-73, §201(a), substituted “insured depository institution” for “insured bank” wherever appearing.

Subsec. (g)(1). Pub. L. 101-73, §201(b), substituted “Director of the Office of Thrift Supervision” for “Federal Home Loan Bank Board”.

Subsec. (h). Pub. L. 101-73, §201(a), substituted “insured depository institution” for “insured bank”.

Subsec. (i)(2). Pub. L. 101-73, §221(3)(A), (B), substituted “insured Federal depository institution” and “insured State depository institution” for “insured bank” and “insured State bank”, respectively.

Subsec. (i)(2)(D). Pub. L. 101-73, §221(3)(C), (D), added subpar. (D).

Subsec. (i)(3). Pub. L. 101-73, §201(a), substituted “insured depository institution” for “insured bank”.

Subsec. (i)(4)(D). Pub. L. 101-73, §221(3)(E), which directed the amendment of subsec. (i)(2) by inserting “and fitness” after “character” in par. (4)(D), was executed to par. (4)(D) as the probable intent of Congress.

Subsec. (i)(5). Pub. L. 101-73, §221(3)(F), which directed the amendment of subsec. (i)(2) by striking out par. (5), was executed to par. (5) as the probable intent of Congress. Prior to amendment, par. (5) read as follows: “Nothing in this subsection shall apply to a conversion of an insured bank to an insured institution pursuant to section 1726(e) of this title.”

Subsec. (j)(3)(D). Pub. L. 101-73, §201(a), substituted “insured depository institution” for “insured bank”.

Subsec. (j)(4), (5). Pub. L. 101-73, §907(c), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

“(4)(A) Any nonmember insured bank which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such nonmember insured bank who violates any provision of section 371c, 371c-1, or 375b of this title, or any lawful regulation issued pursuant thereto, or any provision of section 377 of this title, shall forfeit and pay a civil penalty of not more than \$1,000 per day for each day during which such violation continues: *Provided*, That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used in this section, the term ‘violates’ includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

“(B) In determining the amount of the penalty the Corporation shall take into account the appropriate-

ness of the penalty with respect to the size of financial resources and good faith of the member bank or person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

“(C) The nonmember insured bank or person charged shall be afforded an opportunity for agency hearing, upon request made within ten days after issuance of the notice of assessment. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5. The agency determination shall be made by final order which may be reviewed only as provided in subparagraph (D). If no hearing is requested as herein provided the assessment shall constitute a final and unappealable order.

“(D) Any nonmember insured bank or person against whom an order imposing a civil money penalty has been entered after agency hearing under this section may obtain review by the United States court of appeals for the circuit in which the home office of the member bank is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within twenty days from the service of such order, and simultaneously sending a copy of such notice by registered or certified mail to the Corporation. The Corporation shall promptly certify and file in such court the record upon which the penalty was imposed, as provided in section 2112 of title 28. The findings of the Corporation shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5.

“(E) If any nonmember insured bank or person fails to pay an assessment after it has become a final and unappealable order, or after the court of appeals has entered final judgment in favor of the agency, the Corporation shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

“(F) The Corporation shall promulgate regulations establishing procedures necessary to implement this paragraph.

“(G) All penalties collected under the authority of this paragraph shall be covered into the Treasury of the United States.

“(5) The provisions of this subsection shall not apply to an insured Federal savings bank.”

Subsec. (j)(6). Pub. L. 101-73, §905(d), added par. (6).

Subsecs. (m), (n). Pub. L. 101-73, §221(4), added subsecs. (m) and (n).

1987—Subsec. (c)(12). Pub. L. 100-86, §504(b)(1), amended par. (12) generally. Prior to amendment, par. (12) read as follows: “The provisions of this subsection shall not apply to any merger transaction involving an insured Federal savings bank unless the resulting institution will be an insured bank other than an insured Federal savings bank.”

Subsec. (i)(5). Pub. L. 100-86, §504(b)(2), added par. (5).

Subsec. (j)(1). Pub. L. 100-86, §102(b)(1), inserted reference to section 371c-1 of this title in two places.

Subsec. (j)(3). Pub. L. 100-86, §103(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (j)(4). Pub. L. 100-86, §§102(b)(2), 103, redesignated former par. (3) as (4) and in subpar. (A) inserted “, 371c-1,” and “or any provision of section 377 of this title.”

Subsec. (j)(5). Pub. L. 100-86, §103(a), redesignated former par. (4) as (5).

1982—Subsec. (c)(12). Pub. L. 97-320, §113(n), added par. (12).

Subsec. (j)(1). Pub. L. 97-320, §410(d), struck out “within the meaning of section 221a of this title and” after “of a nonmember insured bank.”

Subsec. (j)(2). Pub. L. 97-320, §423, inserted provisions relating to the applicability of this subsection to any foreign bank as defined in section 3101(7) of this title and its branch in the United States.

Subsec. (j)(3)(A). Pub. L. 97-320, §424(b), (d)(10), inserted proviso giving the Corporation discretionary au-

thority to compromise, etc., any civil money penalty imposed under this subsection, and substituted “may be assessed” for “shall be assessed”.

Subsec. (j)(3)(D). Pub. L. 97-424(e), substituted “twenty days from the service” for “ten days from the date”.

Subsec. (j)(4). Pub. L. 97-320, §113(o), added par. (4).

1980—Subsec. (g). Pub. L. 96-221, §§302(b), 307, inserted provisions identical to provisions inserted by section 101(b) of Pub. L. 96-161, designating existing provisions as par. (1) and adding par. (2), and repealing the amendment made by Pub. L. 96-161. See Repeals and Effective Date of 1980 Amendment notes below.

Pub. L. 96-221, §207(b)(2), (3), provided for the future amendment of subsec. (g)(1) by striking out “payment and” and “, including limitations on the rates of interest or dividends that may be paid” in second sentence, and by striking out third, fifth, and eighth sentences which read as follows: “The Board of Directors may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities or subject to different conditions regarding withdrawal or repayment, according to the nature or location of insured nonmember banks or their depositors, or according to such other reasonable bases as the Board of Directors may deem desirable in the public interest. Such regulations shall prohibit any insured nonmember bank from paying any time deposit before its maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board of Directors, and from waiving any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement. For each violation of any provision of this subsection or any lawful provision of such regulations relating to the payment of interest or dividends on deposits or to withdrawal of deposits, the offending bank shall be subject to a penalty of not more than \$100, which the Corporation may recover for its use.” See Effective Date of 1980 Amendment note below.

Subsec. (k). Pub. L. 96-221, §529, repealed Pub. L. 96-104 and title II of Pub. L. 96-161, resulting in the striking out of subsec. (k) which had provided that no insured nonmember bank or affiliate, or any successor, assignee, endorser, guarantor, or surety thereof, could plead or claim, directly or otherwise, with respect to any deposit or obligation of such bank or affiliate, any defense, right, or benefit under any provision of a State or territory of the United States, or the District of Columbia, regulating or limiting the rate of interest which could be charged or received, etc. and any such provision was preempted, and no civil or criminal penalty which would otherwise be applicable under such provision would apply to such bank or affiliate or any other person.

1979—Subsec. (g). Pub. L. 96-161, §101(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (k). Pub. L. 96-161, §209, added subsec. (k). A prior subsec. (k), added by Pub. L. 96-104 and identical to the subsec. (k) added by Pub. L. 96-161, was repealed by section 212 of Pub. L. 96-161. See Codification note above.

Pub. L. 96-104 added subsec. (k). A prior subsec. (k), which also related to the inapplicability of State usury ceilings to certain obligations issued by insured nonmember banks and affiliates, was repealed by section 1 of Pub. L. 96-104.

1978—Subsec. (c)(1)(B). Pub. L. 95-630, §306, inserted “(including liabilities which would be ‘deposits’ except for the proviso in section 1813(l)(5) of this title)” after “pay any deposits”.

Subsec. (c)(11). Pub. L. 95-369, §6(c)(25), added par. (11).

Subsec. (d). Pub. L. 95-630, §301(b), designated existing provisions as par. (1) and, inserted “domestic” after “operate any new” and “such” after “main office or any”, and added par. (2).

Pub. L. 95-369, §6(c)(26), inserted provision prohibiting a foreign bank from moving any insured branch from one location to another without the consent of the Corporation.



Subsec. (g). Pub. L. 95-369, §6(c)(27), inserted “and in insured branches of foreign banks” after “in insured nonmember banks”.

Subsec. (j). Pub. L. 95-630, §108, designated existing provisions as par. (1) and added pars. (2) and (3).

Pub. L. 95-369, §6(c)(28), inserted at end “The provisions of this subsection shall not apply to any foreign bank having an insured branch with respect to dealings between such bank and any affiliate thereof.”

Subsec. (l). Pub. L. 95-630, §301(c), added subsec. (l).

1974—Subsec. (c)(10). Pub. L. 93-495 added par. (10).

Subsec. (g). Pub. L. 93-501, §102(a), struck out requirement that obligations other than deposits undertaken by insured non-member banks be for the purpose of obtaining funds to be used in the banking business in provisions relating to applicability of this subsection and of regulations under the subsection to such obligations.

Subsec. (k). Pub. L. 93-501, §302, added subsec. (k).

1973—Subsec. (g). Pub. L. 93-100 extended rulemaking authority of Board of Directors to payment and advertisement of dividends on deposits and in the provisions relating to the applicability of the subsection to non-insured banks in the States, eliminated clause designation and struck out provisions of former cl. (2).

1969—Subsec. (g). Pub. L. 91-151 extended the authority of the Board under this subsection to noninsured banks in the States where uninsured savings deposits exceed 20 per cent of the total savings deposits, and, where State laws do not provide for such regulations, empowered the Board up to July 31, 1970, to prevent the rates paid by such noninsured institutions from exceeding 5½ per cent, and further authorized the Board to bring actions in federal courts for compliance, authorized the Board to determine what could be deemed a payment of interest and provided for the promulgation of regulations necessary for the enforcement of the subsection, made the subsection and the regulations thereunder applicable to obligations other than deposits undertaken by insured nonmember banks and their affiliates and extended the regulatory power of the Board to include “dividends”.

1968—Subsec. (g). Pub. L. 90-505 gave the Board power to prescribe rules governing the payment and advertisement of interest on deposits.

1966—Subsec. (c). Pub. L. 89-356, §1(a), laid down more definite guidelines for dealing with the antitrust aspects of bank mergers by prohibiting monopoly bank mergers in all cases, forbidding anticompetitive mergers except in cases where a clear showing is made that a given merger is so beneficial that its allowance is in the public interest, and requiring the uniform application of the law by both judicial and administrative bodies, inserted provisions to delay the effectiveness of agency approval of merger transactions except in emergency situations, imposed a special statute of limitations for antitrust actions arising out of agency-approved merger transactions thereby precluding antitrust actions when the agency has acted immediately to prevent probable failure of a bank, provided for the automatic staying of the effectiveness of agency action by the commencement of an antitrust action unless the court orders otherwise, called for de novo court review, permitted federal bank agencies which approved a subsequently challenged merger to appear in the suit by its own counsel, allowed state banking agencies to present their views, and inserted a definition of “antitrust laws” which would include the Sherman Act, the Clayton Act, and any other Acts in pari materia.

Subsec. (g). Pub. L. 89-597 made the authority of the FDIC Board to prescribe maximum permissible rates of interest that may be paid by member banks on time and savings deposits discretionary rather than mandatory, included such payments by insured mutual savings banks, required prior consultations with the Board of Governors of the FRS and the FHLB Board, authorized different rate limitations for different classes of deposits, for deposits of different amounts, or according to such other reasonable bases as the Board may deem desirable in the public interest, and eliminate provision for rate limitation according to the varying discount

rates of member banks in the several Federal Reserve districts.

Subsec. (i). Pub. L. 89-356, §1(b), added subsec. (i).

Subsec. (j). Pub. L. 89-485 added subsec. (j).

1965—Subsec. (g). Pub. L. 89-79 extended until Oct. 15, 1968, the period during which the provisions of this subsection should not apply to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1962—Subsec. (g). Pub. L. 87-827 inserted sentence making the subsection inapplicable, during the period commencing on Oct. 15, 1962, and ending upon the expiration of three years after such date, to the rate of interest which may be paid by insured nonmember banks on time deposits of foreign governments, monetary and financial authorities of foreign governments when acting as such, or international financial institutions of which the United States is a member.

1960—Subsec. (c). Pub. L. 86-463 prohibited merger or consolidation of any insured bank with any other insured bank, or acquisition of assets of, or assumption of liability to pay any deposits made in, any other insured bank without prior written consent, required publication of notice of any proposed merger, consolidation, acquisition of assets, or assumption of liabilities, enumerated specific items required to be considered before consent may be granted or withheld, directed the agency involved to request a report on competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection, and provided for inclusion in the annual report of the Comptroller, the Board and the Corporation of each merger, consolidation, acquisition of assets, or assumption of liabilities approved.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 363(7) of Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 604(f) of Pub. L. 111-203 effective on the transfer date, see section 604(j) of Pub. L. 111-203, set out as a note under section 1462 of this title.

Pub. L. 111-203, title VI, §611(b), July 21, 2010, 124 Stat. 1612, provided that: “The amendment made by this section [amending this section] shall take effect 18 months after the transfer date.”

[For definition of “transfer date” as used in section 611(b) of Pub. L. 111-203, set out above, see section 5301 of this title.]

Amendment by sections 613(b) and 623(a) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

Amendment by section 615(a) of Pub. L. 111-203 effective on the transfer date, see section 615(c) of Pub. L. 111-203, set out as a note under section 375 of this title.

Amendment by section 627(a)(3) of Pub. L. 111-203 effective 1 year after July 21, 2010, see section 627(b) of Pub. L. 111-203, set out as an Effective Date of Repeal note under section 371a of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 2(c)(2) of 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.

Amendment by section 8(a)(28)-(30) of 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 section 2102(b) of 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.

Amendment by section 2104(c) of Pub. L. 109-171 effective Jan. 1, 2007, see section 2104(e) of Pub. L. 109-171, set out as a note under section 1817 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108-458, title VI, §6205, Dec. 17, 2004, 118 Stat. 3747, provided that: "The amendments made by this subchapter [probably means subtitle C (§§6201-6205) of title VI of Pub. L. 108-458, see Short Title of 2004 Amendment note set out under section 5301 of Title 31, Money and Finance] to Public Law 107-56, the United States Code, the Federal Deposit Insurance Act, and any other provision of law shall take effect as if such amendments had been included in Public Law 107-56, as of the date of enactment of such Public Law [Oct. 26, 2001], and no amendment made by such Public Law that is inconsistent with an amendment made by this subchapter shall be deemed to have taken effect."

Amendment by Pub. L. 108-386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108-386, set out as notes under section 321 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-56, title III, §327(b)(2), Oct. 26, 2001, 115 Stat. 319, as amended by Pub. L. 108-458, title VI, §6202(i), Dec. 17, 2004, 118 Stat. 3746, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to any application submitted to the responsible agency under section 18(c) of the Federal Deposit Insurance Act [12 U.S.C. 1828(c)] after December 31, [sic]."

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-102, title II, §209, Nov. 12, 1999, 113 Stat. 1395, provided that: "This subtitle [subtitle A (§§201-210) of title II of Pub. L. 106-102, amending this section and sections 78c, 78o, and 78o-3 of Title 15, Commerce and Trade, and enacting provisions set out as notes under section 1811 of this title and section 78c of Title 15] shall take effect at the end of the 18-month period beginning on the date of the enactment of this Act [Nov. 12, 1999]."

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2615(b) of Pub. L. 104-208 applicable on and after Jan. 1, 1996, see section 2615(c) of Pub. L. 104-208, set out as a note under section 1781 of this title.

Amendment by section 2704(d)(14)(U), (V) 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 1994 AMENDMENT

Pub. L. 103-328, title I, §101(e), Sept. 29, 1994, 108 Stat. 2343, provided that: "The amendments made by this section [amending this section and sections 1841, 1842, and 1846 of this title] shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act [Sept. 29, 1994]."

#### 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 OF 1991 AMENDMENT

Amendment by section 306(k) of Pub. L. 102-242 effective upon earlier of date on which final regulations under section 306(m)(1) of Pub. L. 102-242 become effective or 150 days after Dec. 19, 1991, see section 306(l) of Pub. L. 102-242, set out as a note under section 375b of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 907(c) of Pub. L. 101-73 applicable to conduct engaged in after Aug. 9, 1989, except that increased maximum penalties of \$5,000 and \$25,000 may apply to conduct engaged in before such date if such conduct is not already subject to a notice issued by the appropriate agency and occurred after completion of the last report of the examination of the institution by the appropriate agency occurring before Aug. 9, 1989, see section 907(d) of Pub. L. 101-73, set out as a note under section 93 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-221, title II, §207(b), Mar. 31, 1980, 94 Stat. 144, provided in part that the amendment by that section is effective 6 years after Mar. 31, 1980.

Amendment by section 302(b) of Pub. L. 96-221 effective at the close of Mar. 31, 1980, see section 306 of Pub. L. 96-221, set out as a note under section 1464 of this title.

Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided that the amendment made by that section is effective at the close of Mar. 31, 1980.

#### EFFECTIVE AND TERMINATION DATES OF 1979 AMENDMENTS

Amendment by section 101(b) of Pub. L. 96-161 effective Dec. 31, 1979, with that amendment to remain in effect until the close of Mar. 31, 1980, see section 104 of Pub. L. 96-161, formerly set out as a note under section 371a of this title.

Amendment by section 209 of Pub. L. 96-161 applicable only with respect to deposits made or obligations issued in any State during the period beginning on Dec. 28, 1979, and ending on the earliest of (1) in the case of a State statute, July 1, 1980; (2) the date, after Dec. 28, 1979, on which such State adopts a law stating in substance that such State does not want the amendment made by Pub. L. 96-161 to apply with respect to such deposits and obligations; or (3) the date on which such State certifies that the voters of such State, after Dec. 28, 1979, have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 211 of Pub. L. 96-161, set out as an Effective Date of 1979 Amendment note under section 371b-1 of this title.

Amendment by Pub. L. 96-104 applicable to deposits made or obligations issued in any State during the period beginning on Nov. 5, 1979, and ending on the earlier of July 1, 1981, the date after Nov. 5, 1979, on which such State adopts a law stating in substance that such State does not want the amendment of this section to apply with respect to such deposits and obligations, or the date on which such State certifies that the voters of such State have voted in favor of, or to retain, any law, provision of the constitution of such State, or amendment of the constitution of such State, which limits the amount of interest which may be charged in connection with such deposits and obligations, see section 204 of Pub. L. 96-104, set out as an Effective Date of 1979 Amendment note under section 371b-1 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 108 of Pub. L. 95-630, relating to imposition of civil penalties, applicable to violations occurring or continuing after Nov. 10, 1978, see section 109 of Pub. L. 95-630, set out as a note under section 93 of this title.

Amendment by sections 301(c) and 306 of Pub. L. 95-630 effective on the expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of this title.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-501, title I, §102(b), Oct. 29, 1974, 88 Stat. 1558, provided that: "The amendment made by sub-

section (a) [amending this section] shall not apply to any bank holding company which has filed prior to the date of enactment of this Act [Oct. 29, 1974] an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act [section 1843 of this title], or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933 [section 77c(a)(3) of Title 15, Commerce and Trade].”

Amendment by section 302 of Pub. L. 93-501 applicable to deposits made or obligations issued in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law limiting the amount of interest which may be charged in connection with such deposits or obligations, see section 304 of Pub. L. 93-501, set out as a note under section 371b-1 of this title.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-100 effective on thirtieth day after Aug. 16, 1973, see section 8 of Pub. L. 93-100, set out as an Effective Date note under section 1469 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 1969 AMENDMENT

Section 7 of Pub. L. 89-597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of subsec. (g) of this section by addition of three sentences at the end thereof by section 2(a) of Pub. L. 91-151 to be effective only to Dec. 15, 1980, and that on Dec 15, 1980, such three sentences were to be repealed) was repealed by section 207(a) of Pub. L. 96-221.

#### EFFECTIVE AND TERMINATION DATES OF 1966 AMENDMENT

Section 7 of Pub. L. 89-597, as amended, formerly set out as an Effective and Termination Dates of 1966 Amendment note under section 461 of this title (which provided in part that amendment of the second and third sentences of subsec. (g) of this section by section 3 of Pub. L. 89-597 was effective only to Dec. 15, 1980, and that on Dec. 15, 1980, such sentences were to be amended to read as they would without the amendment by section 3 of Pub. L. 89-597), was repealed by section 207(a) of Pub. L. 96-221.

#### REPEALS

Amendment by section 101 of Pub. L. 96-161, cited as a credit to this section, was repealed at the close of Mar. 31, 1980, by section 307 of Pub. L. 96-221, and substantially identical provisions were enacted by section 302 of Pub. L. 96-221, such amendments to take effect at the close of Mar. 31, 1980.

#### SAVINGS PROVISION

Pub. L. 96-221, title V, §529, Mar. 31, 1980, 94 Stat. 168, provided in part that, notwithstanding the repeal of Pub. L. 96-104 and title II of Pub. L. 96-161, the provisions of subsec. (k) of this section [which had been added to this section by those repealed laws] shall continue to apply to any loan made, any deposit made, or any obligation issued to any State during any period when those provisions were in effect in such State.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsection (c)(9) of this section is listed on page 171), see section 3003 of Pub. L. 104-66, set out as a note under section 1113 of Title 31, Money and Finance.

#### BANKING AGENCY PUBLICATION REQUIREMENTS

Pub. L. 105-18, title V, §50004, June 12, 1997, 111 Stat. 212, provided that:

“(a) IN GENERAL.—A qualifying regulatory agency may take any of the following actions with respect to depository institutions or other regulated entities whose principal place of business is within, or with respect to transactions or activities within, an area in which the President, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5170], has determined, on or after February 28, 1997, that a major disaster exists, or within an area determined to be eligible for disaster relief under other Federal law by reason of damage related to the 1997 flooding of the Red River of the North, the Minnesota River, and the tributaries of such rivers, if the agency determines that the action would facilitate recovery from the major disaster:

“(1) PROCEDURE.—Exercising the agency’s authority under provisions of law other than this section without complying with—

“(A) any requirement of section 553 of title 5, United States Code; or

“(B) any provision of law that requires notice or opportunity for hearing or sets maximum or minimum time limits with respect to agency action.

“(2) PUBLICATION REQUIREMENTS.—Making exceptions, with respect to institutions or other entities for which the agency is the primary Federal regulator, to—

“(A) any publication requirement with respect to establishing branches or other deposit-taking facilities; or

“(B) any similar publication requirement.

“(b) PUBLICATION REQUIRED.—A qualifying regulatory agency shall publish in the Federal Register a statement that—

“(1) describes any action taken under this section; and

“(2) explains the need for the action.

“(c) QUALIFYING REGULATORY AGENCY DEFINED.—For purposes of this section, the term ‘qualifying regulatory agency’ means—

“(1) the Board of Governors of the Federal Reserve System;

“(2) the Comptroller of the Currency;

“(3) the Director of the Office of Thrift Supervision;

“(4) the Federal Deposit Insurance Corporation;

“(5) the Financial Institutions Examination Council;

“(6) the National Credit Union Administration; and

“(7) with respect to chapter 53 of title 31, United States Code, the Secretary of the Treasury.

“(d) EXPIRATION.—Any exception made under this section shall expire not later than February 28, 1998.”

Similar provisions were contained in the following prior acts:

Pub. L. 103-76, §4, Aug. 12, 1993, 107 Stat. 753.

Pub. L. 102-485, §5, Oct. 23, 1992, 106 Stat. 2773.

#### REVIEW OF RISK-BASED CAPITAL STANDARDS

Pub. L. 102-242, title III, §305(b), Dec. 19, 1991, 105 Stat. 2355, as amended by Pub. L. 103-325, title III, §335, Sept. 23, 1994, 108 Stat. 2233, provided that:

“(1) IN GENERAL.—Each appropriate Federal banking agency shall revise its risk-based capital standards for insured depository institutions to ensure that those standards—

“(A) take adequate account of—

“(i) interest-rate risk;

“(ii) concentration of credit risk; and

“(iii) the risks of nontraditional activities;

“(B) reflect the actual performance and expected risk of loss of multifamily mortgages; and

“(C) take into account the size and activities of the institutions and do not cause undue reporting burdens.

“(2) INTERNATIONAL DISCUSSIONS.—The Federal banking agencies shall discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements.

“(3) DEADLINE FOR PRESCRIBING REVISED STANDARDS.—Each appropriate Federal banking agency shall—

“(A) publish final regulations in the Federal Register to implement paragraph (1) not later than 18 months after the date of enactment of this Act [Dec. 19, 1991]; and

“(B) establish reasonable transition rules to facilitate compliance with those regulations.

“(4) DEFINITIONS.—For purposes of this subsection, the terms ‘appropriate Federal banking agency’, ‘Federal banking agency’ and ‘insured depository institution’ have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).”

#### PURCHASED MORTGAGE SERVICING RIGHTS

Pub. L. 102-242, title IV, §475, Dec. 19, 1991, 105 Stat. 2386, as amended by Pub. L. 102-550, title XVI, §1606(i)(2), Oct. 28, 1992, 106 Stat. 4089; Pub. L. 106-569, title XII, §1208, Dec. 27, 2000, 114 Stat. 3035, provided that:

“(a) IN GENERAL.—Notwithstanding section 5(t)(4) of the Home Owners’ Loan Act [former 12 U.S.C. 1464(t)(4)], each appropriate Federal banking agency shall determine, with respect to insured depository institutions for which it is the appropriate Federal regulator, the amount of readily marketable purchased mortgage servicing rights that may be included in calculating such institution’s tangible capital, risk-based capital, or leverage limit, if—

“(1) such servicing rights are valued at not more than 90 percent (or such other percentage exceeding 90 percent but not exceeding 100 percent, as may be determined under subsection (b)) of their fair market value; and

“(2) the fair market value of such servicing rights is determined not less often than quarterly.

“(b) AUTHORITY TO DETERMINE PERCENTAGE BY WHICH TO DISCOUNT VALUE OF SERVICING RIGHTS.—The appropriate Federal banking agencies may allow readily marketable purchased mortgage servicing rights to be valued at more than 90 percent of their fair market value but at not more than 100 percent of such value, if such agencies jointly make a finding that such valuation would not have an adverse effect on the deposit insurance funds or the safety and soundness of insured depository institutions.

“(c) DEFINITION.—For purposes of this section, the terms ‘appropriate Federal banking agency’, ‘deposit insurance fund’, and ‘insured depository institution’ have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

“(d) EFFECTIVE DATE.—This section shall apply after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 19, 1991].”

#### ELIMINATION OF INTEREST RATE DIFFERENTIALS

Pub. L. 97-320, title III, §326(b)-(d), Oct. 15, 1982, 96 Stat. 1500, provided that:

“(b)(1) Interest rate differentials for all categories of deposits or accounts between (i) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation, and (ii) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(j)) [12 U.S.C. 1813(f)], shall be phased out on or before January 1, 1984.

“(2) Any differential which is being phased out pursuant to a schedule established by regulations prescribed by the Depository Institutions Deregulation Committee prior to the date of enactment of this Act [Oct. 15, 1982] shall be phased out as soon as practicable, but in no event later than such schedule provides.

“(3) Notwithstanding any other provision of law, no differential for any category of deposits or accounts shall be established or maintained on or after January 1, 1984.

“(c) No interest rate differential may be established or maintained in the case of the deposit account au-

thorized pursuant to section 204(c) of the Depository Institutions Deregulation Act of 1980 [12 U.S.C. 3503(c)].

“(d) In the case of the elimination or reduction of any interest rate differential under subsection (b) with respect to any category of deposits or accounts between (1) any bank (other than a savings bank) the deposits of which are insured by the Federal Deposit Insurance Corporation and (2) any savings and loan, building and loan, or homestead association (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank as defined in section 3(f) of the Federal Deposit Insurance Act [12 U.S.C. 1813(f)], the maximum rate of interest which shall be established for such category of deposits for banks (other than savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation shall be equal to the highest rate of interest which savings and loan associations the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation were permitted to pay on such category of deposits immediately prior to the elimination or reduction of such interest rate differential.”

#### STATES HAVING CONSTITUTIONAL PROVISIONS REGARDING MAXIMUM INTEREST RATES

Pub. L. 96-161, title II, §213, Dec. 28, 1979, 93 Stat. 1240, provided that the provisions of title II of Pub. L. 96-161, which enacted subsec. (k) of this section and repealed provisions which had formerly amended this section, to continue to apply until July 1, 1981, in the case of any State having a constitutional provision regarding maximum interest rates.

#### INTEREST RATES; CONTROLS

Reduction of interest rates to maximum extent feasible in light of prevailing money market and general economic conditions, see section 1 of Pub. L. 89-597, set out as a note under section 461 of this title.

#### REINSTATEMENT OF WITHDRAWN OR ABANDONED APPLICATIONS MADE BEFORE FEBRUARY 21, 1966, FOR APPROVAL OF MERGERS

Pub. L. 89-356, §3, Feb. 21, 1966, 80 Stat. 10, provided that: “Any application for approval of a merger transaction (as the term ‘merger transaction’ is used in section 18(c) of the Federal Deposit Insurance Act) [subsec. (c) of this section] which was made before the date of enactment of this Act [Feb. 21, 1966], but was withdrawn or abandoned as a result of any objections made or any suit brought by the Attorney General, may be reinstated and shall be acted upon in accordance with the provisions of this Act without prejudice by such withdrawal, abandonment, objections, or judicial proceedings.”

#### SPECIAL ANTITRUST TREATMENT OF MERGER TRANSACTIONS CONSUMMATED BEFORE FEBRUARY 21, 1966, AND OF LITIGATION PENDING ON OR AFTER FEBRUARY 21, 1966, WITH RESPECT TO MERGER TRANSACTIONS CONSUMMATED AFTER JUNE 16, 1963

Pub. L. 89-356, §2, Feb. 21, 1966, 80 Stat. 10, provided that:

“(a) Any merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated prior to June 17, 1963, the bank resulting from which has not been dissolved or divided and has not effected a sale or distribution of assets and has not taken any other similar action pursuant to a final judgment under the antitrust laws prior to the enactment of this Act [Feb. 21, 1966], shall be conclusively presumed to have not been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

“(b) No merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated after June 16, 1963, and prior to the date of enactment of this Act [Feb. 21, 1966] and

as to which no litigation was initiated by the Attorney General prior to the date of enactment of this Act [Feb. 21, 1966] may be attacked after such date in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

“(c) Any court having pending before it on or after the date of enactment of this Act [Feb. 21, 1966] any litigation initiated under the antitrust laws by the Attorney General after June 16, 1963 with respect to the merger, consolidation, acquisition of assets, or assumption of liabilities of an insured bank consummated after June 16, 1963, shall apply the substantive rule of law set forth in section 18(c)(5) of the Federal Deposit Insurance Act [subsec. (c)(5) of this section], as amended by this Act.

“(d) For the purposes of this section, the term ‘antitrust laws’ means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.”

### § 1828a. Prudential safeguards

#### (a) Comptroller of the Currency

##### (1) In general

The Comptroller of the Currency may, by regulation or order, impose restrictions or requirements on relationships or transactions between a national bank and a subsidiary of the national bank that the Comptroller finds are—

(A) consistent with the purposes of this Act, title LXII of the Revised Statutes of the United States, and other Federal law applicable to national banks; and

(B) appropriate to avoid any significant risk to the safety and soundness of insured depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

##### (2) Review

The Comptroller of the Currency shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (1)(B); and

(B) modify or eliminate any such restriction or requirement the Comptroller finds is no longer required for such purposes.

#### (b) Board of Governors of the Federal Reserve System

##### (1) In general

The Board of Governors of the Federal Reserve System may, by regulation or order, impose restrictions or requirements on relationships or transactions—

(A) between a depository institution subsidiary of a bank holding company and any affiliate of such depository institution (other than a subsidiary of such institution); or

(B) between a State member bank and a subsidiary of such bank;

if the Board makes a finding described in paragraph (2) with respect to such restriction or requirement.

#### (2) Finding

The Board of Governors of the Federal Reserve System may exercise authority under paragraph (1) if the Board finds that the exercise of such authority is—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], the Federal Reserve Act [12 U.S.C. 221 et seq.], and other Federal law applicable to depository institution subsidiaries of bank holding companies or State member banks, as the case may be; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

#### (3) Review

The Board of Governors of the Federal Reserve System shall regularly—

(A) review all restrictions or requirements established pursuant to paragraph (1) or (4) to determine whether there is a continuing need for any such restriction or requirement to carry out the purposes of the Act, including the avoidance of any adverse effect referred to in paragraph (2)(B) or (4)(B); and

(B) modify or eliminate any such restriction or requirement the Board finds is no longer required for such purposes.

#### (4) Foreign banks

The Board may, by regulation or order, impose restrictions or requirements on relationships or transactions between a branch, agency, or commercial lending company of a foreign bank in the United States and any affiliate in the United States of such foreign bank that the Board finds are—

(A) consistent with the purposes of this Act, the Bank Holding Company Act of 1956, the Federal Reserve Act, and other Federal law applicable to foreign banks and their affiliates in the United States; and

(B) appropriate to prevent an evasion of any provision of law referred to in subparagraph (A) or to avoid any significant risk to the safety and soundness of depository institutions or the Deposit Insurance Fund or other adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

#### (c) Federal Deposit Insurance Corporation

##### (1) In general

The Federal Deposit Insurance Corporation may, by regulation or order, impose restrictions or requirements on relationships or transactions between a State nonmember bank (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) and a subsidiary of the State nonmember bank that the Corporation finds are—

(A) consistent with the purposes of this Act, the Federal Deposit Insurance Act [12