

ercise the powers granted by this section. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

(2) Such hearing shall be conducted in accordance with the provisions of section 1818(h) of this title, and subject to judicial review as provided in such section, and shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or later date is set by the Comptroller at the request of any association so served.

(3) Unless the association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Comptroller shall find that any allegation specified in the notice of charges has been established, the Comptroller may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this section, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(4) A revocation order shall become effective not earlier than the expiration of thirty days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

(Pub. L. 87-722, §1, Sept. 28, 1962, 76 Stat. 668; Pub. L. 96-221, title VII, §704, Mar. 31, 1980, 94 Stat. 187; Pub. L. 112-231, §2(b)(1), Dec. 28, 2012, 126 Stat. 1619.)

#### AMENDMENTS

2012—Subsec. (a). Pub. L. 112-231, §2(b)(1)(A), struck out “committee of estates of lunatics,” before “or in any other fiduciary capacity”.

Subsec. (j). Pub. L. 112-231, §2(b)(1)(B), struck out “committee of estates of lunatics” before “or other fiduciary, under court, private.”.

1980—Subsec. (k). Pub. L. 96-221 added subsec. (k).

#### SAVINGS PROVISION

Pub. L. 87-722, §2, Sept. 28, 1962, 76 Stat. 669, provided that: “Nothing contained in this Act [enacting this section, amending sections 581 and 584(a)(2) of Title 26, and repealing section 248(k) of this title] shall be deemed to affect or curtail the right of any national bank to act in fiduciary capacities under a permit granted before the date of enactment of this Act [Sept. 28, 1962] by the Board of Governors of the Federal Reserve System, nor to affect the validity of any transactions entered into at any time by any national bank pursuant to such permit. On and after the date of enactment of this Act the exercise of fiduciary powers by national banks shall be subject to the provisions of this Act and the requirements of regulations issued by the Comptroller of the Currency pursuant to the authority granted by this Act.”

### § 93. Violation of provisions of chapter

#### (a) Forfeiture of franchise; personal liability of directors

If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of title 62 of the Revised Statutes, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district or Territorial court of the United States in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation.

#### (b) Civil money penalty

##### (1) First tier

Any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, violates any provision of title 62 of the Revised Statutes or any of the provisions of section 92a of this title, or any regulation issued pursuant thereto, shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

##### (2) Second tier

Notwithstanding paragraph (1), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who, commits any violation described in paragraph (1) which—<sup>1</sup>

(A)(i) commits any violation described in any<sup>2</sup> paragraph (1);

(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such association; or

(iii) breaches any fiduciary duty;

(B) which violation, practice, or breach—

(i) is part of a pattern of misconduct;

(ii) causes or is likely to cause more than a minimal loss to such association; or

(iii) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

##### (3) Third tier

Notwithstanding paragraphs (1) and (2), any national banking association which, and any institution-affiliated party (within the meaning of section 1813(u) of this title) with respect to such association who—

(A) knowingly—

(i) commits any violation described in paragraph (1);

<sup>1</sup> So in original. The words “, commits any violation described in paragraph (1) which” probably should not appear.

<sup>2</sup> So in original. The word “any” probably should not appear.

- (ii) engages in any unsafe or unsound practice in conducting the affairs of such association; or
- (iii) breaches any fiduciary duty; and

(B) knowingly or recklessly causes a substantial loss to such association or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

**(4) Maximum amounts of penalties for any violation described in paragraph (3)**

The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

(A) in the case of any person other than a national banking association, an amount to not<sup>3</sup> exceed \$1,000,000; and

(B) in the case of a national banking association, an amount not to exceed the lesser of—

- (i) \$1,000,000; or
- (ii) 1 percent of the total assets of such association.

**(5) Assessment; etc.**

Any penalty imposed under paragraph (1), (2), or (3) shall be assessed and collected by the Comptroller of the Currency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

**(6) Hearing**

The association or other person against whom any penalty is assessed under this subsection shall be afforded an agency hearing if such association or person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1818(h) of this title shall apply to any proceeding under this subsection.

**(7) Disbursement**

All penalties collected under authority of this subsection shall be deposited into the Treasury.

**(8) "Violate" defined**

For purposes of this section, the term "violate" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

**(12)<sup>4</sup> Regulations**

The Comptroller shall prescribe regulations establishing such procedures as may be necessary to carry out this subsection.

**(c) Notice under this section after separation from service**

The resignation, termination of employment or participation, or separation of an institution-

affiliated party (within the meaning of section 1813(u) of this title) with respect to such an association (including a separation caused by the closing of such an association) shall not affect the jurisdiction and authority of the Comptroller of the Currency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such association (whether such date occurs before, on, or after August 9, 1989).

**(d) Forfeiture of franchise for money laundering or cash transaction reporting offenses**

**(1) In general**

**(A) Conviction of title 18 offenses**

**(i) Duty to notify**

If a national bank, a Federal branch, or Federal agency has been convicted of any criminal offense under section 1956 or 1957 of title 18, the Attorney General shall provide to the Comptroller of the Currency a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

**(ii) Notice of termination; pretermination hearing**

After receiving written notification from the Attorney General of such a conviction, the Comptroller of the Currency shall issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

**(B) Conviction of title 31 offenses**

If a national bank, a Federal branch, or a Federal agency is convicted of any criminal offense under section 5322 or 5324 of title 31, after receiving written notification from the Attorney General, the Comptroller of the Currency may issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

**(C) Judicial review**

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

**(2) Factors to be considered**

In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller of the Currency shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the national bank, Federal branch, or Federal agency knew of, or were involved in, the commission of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the national bank, Fed-

<sup>3</sup>So in original. Probably should be "not to".

<sup>4</sup>So in original. No pars. (9) to (11) have been enacted.

eral branch, or Federal agency which were designed to prevent the occurrence of any such offense.

(C) The extent to which the national bank, Federal branch, or Federal agency has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the bank, Federal branch, or Federal agency was found guilty.

(D) The extent to which the national bank, Federal branch, or Federal agency has implemented additional internal controls (since the commission of the offense of which the bank, Federal branch, or Federal agency was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

### (3) Successor liability

This subsection shall not apply to a successor to the interests of, or a person who acquires, a bank, a Federal branch, or a Federal agency that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

### (4) "Senior executive officer" defined

The term "senior executive officer" has the same meaning as in regulations prescribed under section 1831i(f) of this title.

### (d)<sup>5</sup> Authority

The Comptroller of the Currency may act in the Comptroller's own name and through the Comptroller's own attorneys in enforcing any provision of title 62 of the Revised Statutes, regulations thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Comptroller of the Currency is a party.

(R.S. § 5239; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Pub. L. 95-630, title I, § 103, Nov. 10, 1978, 92 Stat. 3643; Pub. L. 97-320, title IV, § 424(d)(3), (f), (g), Oct. 15, 1982, 96 Stat. 1523; Pub. L. 97-457, § 24, Jan. 12, 1983, 96 Stat. 2510; Pub. L. 101-73, title IX, §§ 905(e), 907(e), Aug. 9, 1989, 103 Stat. 460, 469; Pub. L. 102-550, title XV, § 1502(a), Oct. 28, 1992, 106 Stat. 4045; Pub. L. 103-322, title XXXIII, § 330017(b)(2), Sept. 13, 1994, 108 Stat. 2149; Pub. L. 103-325, title III, § 331(b)(3), title IV, § 411(c)(2)(C), 413(b)(2), Sept. 23, 1994, 108 Stat. 2232, 2253, 2254.)

#### REFERENCES IN TEXT

Title 62 of the Revised Statutes, referred to in subsecs. (a), (b)(1), and (d), was in the original "this Title" meaning title LXII of the Revised Statutes, consisting of R.S. §§ 5133 to 5244, which are classified to this section and sections 16, 21, 22 to 24a, 25a, 25b, 26, 27, 29, 35 to 37, 39, 43, 52, 53, 55 to 57, 59 to 62, 66, 71, 72 to 76, 81, 83 to 86, 90, 91, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 215c, 481 to 485, 501, 541, 548, and 582 of this title.

<sup>5</sup> So in original. Probably should be "(e)".

See, also, sections 8, 333, 334, 475, 656, 709, 1004, and 1005 of Title 18, Crimes and Criminal Procedure. For complete classification of R.S. §§ 5133 to 5244 to the Code, see Tables.

#### CODIFICATION

R.S. § 5239 derived from act June 3, 1864, ch. 106, § 53, 13 Stat. 116, which was the National Bank Act. See section 38 of this title.

Act Mar. 3, 1911, conferred the powers and duties of the former circuit courts upon the district courts.

#### AMENDMENTS

1994—Subsec. (c). Pub. L. 103-322, § 330017(b)(2), and Pub. L. 103-325, § 413(b)(2), amended section identically, redesignating subsec. (c), relating to forfeiture of franchise for money laundering, as (d).

Subsec. (d). Pub. L. 103-322, § 330017(b)(2), and Pub. L. 103-325, § 413(b)(2), amended section identically, redesignating subsec. (c), relating to forfeiture of franchise for money laundering, as (d).

Pub. L. 103-325, § 331(b)(3), added subsec. (d) relating to authority.

Subsec. (d)(1)(B). Pub. L. 103-325, § 411(c)(2)(C), substituted "section 5322 or 5324 of title 31" for "section 5322 of title 31".

1992—Subsec. (c). Pub. L. 102-550 added subsec. (c) relating to forfeiture of franchise for money laundering.

1989—Subsec. (b). Pub. L. 101-73, § 907(e), amended subsec. (b) generally, revising and restating as pars. (1) to (8) and (12) provisions of former pars. (1) to (8).

Subsec. (c). Pub. L. 101-73, § 905(e), added subsec. (c) relating to notice after separation from service.

1982—Subsec. (b)(1). Pub. L. 97-320, as amended by Pub. L. 97-457, inserted "or any of the provisions of section 92a of this title", and substituted "may be assessed" for "shall be assessed" and "title" for "chapter".

1978—Pub. L. 95-630 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-73, title IX, § 907(l), Aug. 9, 1989, 103 Stat. 476, provided that: "The amendments made by this section [amending this section and sections 481, 504, 505, 1467a, 1786, 1817, 1818, 1828, 1847, and 1972 of this title] shall apply with respect to conduct engaged in by any person after the date of the enactment of this Act [Aug. 9, 1989], except that the increased maximum civil penalties of \$5,000 and \$25,000 per violation or per day may apply to such conduct engaged in before such date if such conduct—

"(1) is not already subject to a notice (initiating an administrative proceeding) issued by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act [12 U.S.C. 1813(q)]) or the National Credit Union Administration Board; and

"(2) occurred after the completion of the last report of examination of the institution involved by the appropriate Federal banking agency (as so defined) occurring before the date of the enactment of this Act."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-630, title I, § 109, Nov. 10, 1978, 92 Stat. 3665, provided that: "Any amendment made by this title which provides for the imposition of civil penalties [enacting sections 504 and 505 of this title and amending this section and sections 1464, 1730, 1730a, 1786, 1818, 1828, and 1847 of this title] shall apply only to violations occurring or continuing after the date of its enactment [Nov. 10, 1978]."

#### EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

**§ 93a. Authority to prescribe rules and regulations**

Except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to another regulatory agency, the Comptroller of the Currency is authorized to prescribe rules and regulations to carry out the responsibilities of the office, except that the authority conferred by this section does not apply to section 36 of this title or to securities activities of National Banks under the Act commonly known as the "Glass-Steagall Act".

(R.S. §5239A, as added Pub. L. 96-221, title VII, §708, Mar. 31, 1980, 94 Stat. 188.)

REFERENCES IN TEXT

The Glass-Steagall Act, referred to in text, probably refers to act June 16, 1933, ch. 89, 48 Stat. 162, as amended, also known as the Banking Act of 1933 or the Glass-Steagall Act, 1933, rather than to act Feb. 27, 1932, ch. 58, 47 Stat. 56, known as the Glass-Steagall Act, 1932. Section 16 of the 1933 act, which amended section 24 (Seventh) of this title, related in part to securities activities of national banks. For complete classification of these Acts to the Code, see Tables.

**§ 94. Venue of suits**

Any action or proceeding against a national banking association for which the Federal Deposit Insurance Corporation has been appointed receiver, or against the Federal Deposit Insurance Corporation as receiver of such association, shall be brought in the district or territorial court of the United States held within the district in which that association's principal place of business is located, or, in the event any State, county, or municipal court has jurisdiction over such an action or proceeding, in such court in the county or city in which that association's principal place of business is located.

(R.S. §5198; Feb. 18, 1875, ch. 80, §1, 18 Stat. 320; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Pub. L. 97-320, title IV, §406, Oct. 15, 1982, 96 Stat. 1512; Pub. L. 97-457, §20(a), Jan. 12, 1983, 96 Stat. 2509.)

CODIFICATION

The last sentence of R.S. §5198, as added by act Feb. 18, 1875, ch. 80, §1, 18 Stat. 320, appears to have been derived from act June 3, 1864, ch. 106, §57, 13 Stat. 116, which was the National Bank Act. See section 38 of this title.

Section is comprised of last sentence of R.S. §5198 as added by act Feb. 18, 1875, ch. 80, §1, 18 Stat. 320. The remaining sentences of R.S. §5198 are classified to section 86 of this title.

Act Mar. 3, 1911, conferred powers and duties of former circuit courts on district courts.

AMENDMENTS

1982—Pub. L. 97-320, as amended by Pub. L. 97-457, amended section generally. Prior to amendment section read as follows: "Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-457, §20(b), Jan. 12, 1983, 96 Stat. 2509, provided that: "The amendment made by subsection (a)

[amending this section] shall be deemed to have taken effect upon the enactment of Public Law 97-320 [Oct. 15, 1982]."

**§ 94a. Repealed. June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948**

Section, act July 12, 1882, ch. 290, §4, 22 Stat. 163, related to jurisdiction and venue. See sections 1348 and 1394 of Title 28, Judiciary and Judicial Procedure.

**§ 95. Emergency limitations and restrictions on business of members of Federal Reserve System; designation of legal holiday for national banking associations; exceptions; "State" defined**

(a) In order to provide for the safer and more effective operation of the National Banking System and the Federal Reserve System, to preserve for the people the full benefits of the currency provided for by the Congress through the National Banking System and the Federal Reserve System, and to relieve interstate commerce of the burdens and obstructions resulting from the receipt on an unsound or unsafe basis of deposits subject to withdrawal by check, during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent and subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President. Any individual, partnership, corporation, or association, or any director, officer or employee thereof, violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or, if a natural person, may, in addition to such fine, be imprisoned for a term not exceeding ten years. Each day that any such violation continues shall be deemed a separate offense.

(b)(1) In the event of natural calamity, riot, insurrection, war, or other emergency conditions occurring in any State whether caused by acts of nature or of man, the Comptroller of the Currency may designate by proclamation any day a legal holiday for the national banking associations located in that State. In the event that the emergency conditions affect only part of a State, the Comptroller of the Currency may designate the part so affected and may proclaim a legal holiday for the national banking associations located in that affected part. In the event that a State or a State official authorized by law designates any day as a legal holiday for ceremonial or emergency reasons, for the State or any part thereof, that same day shall be a legal holiday for all national banking associations or their offices located in that State or the part so affected. A national banking association or its affected offices may close or remain open on such a State-designated holiday unless the Comptroller of the Currency by written order directs otherwise.

(2) For the purpose of this subsection, the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the