

from the merger or consolidation of a noninsured bank or institution with an insured State bank, shall continue as an insured bank.”

Pub. L. 101-73, §205(2)(C), which directed the amendment of subsec. (b) by substituting “(b) CERTIFICATION BY OTHER BANKING AGENCIES.—Every national bank” for “(b) Every national bank” could not be executed literally because the original read “(b) Every national member bank”, but was executed by inserting the heading without changing the text to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 101-73, §205(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Every Federal savings bank which is chartered pursuant to section 1464(o) of this title, and which is engaged in the business of receiving deposits other than trust funds, shall be an insured bank from the time it is authorized to commence business, until such time as its accounts are insured by the Federal Savings and Loan Insurance Corporation.”

Subsec. (d). Pub. L. 101-73, §205(3), added subsec. (d). 1982—Subsec. (c). Pub. L. 97-320 added subsec. (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 4502 of Title 50, War and National Defense.

§ 1815. Deposit insurance

(a) Application to Corporation required

(1) In general

Except as provided in paragraphs (2) and (3), any depository institution which is engaged in the business of receiving deposits other than trust funds (as defined in section 1813(p) of this title), upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution.

(2) Interim depository institutions

In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open for business, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency.

(3) Application and approval not required in cases of continued insurance

Paragraph (1) shall not apply in the case of any depository institution whose insured status is continued pursuant to section 1814 of this title.

(4) Review requirements

In reviewing any application under this subsection, the Board of Directors shall consider the factors described in section 1816 of this title in determining whether to approve the application for insurance.

(5) Notice of denial of application for insurance

If the Board of Directors votes to deny any application for insurance by any depository institution, the Board of Directors shall promptly notify the appropriate Federal banking agency and, in the case of any State depository institution, the appropriate State banking supervisor of the denial of such application, giving specific reasons in writing for the

Board of Directors' determination with reference to the factors described in section 1816 of this title.

(6) Nondelegation requirement

The authority of the Board of Directors to make any determination to deny any application under this subsection may not be delegated by the Board of Directors.

(b) Foreign branch nonmember banks; matters considered

Subject to the provisions of this chapter and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

- (1) the financial history and condition of the bank,
- (2) the adequacy of its capital structure,
- (3) its future earnings prospects,
- (4) the general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,
- (5) the risk presented to the Deposit Insurance Fund,
- (6) the convenience and needs of the community to be served by the branch,
- (7) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this chapter, and
- (8) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this chapter.

(c) Protection to Deposit Insurance Fund; surety bond, pledge of assets, etc.; injunction

(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on deposit with the Corporation, or as the Corporation may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in accordance with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such additional

requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the Deposit Insurance Fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In the implementation of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any United States district court, or United States court of any territory, within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5, and may not be made an issue in an action for an injunction under this paragraph.

(d) Insurance fees

(1) In general

Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain the reserve ratio of the Deposit Insurance Fund.

(2) Fee credited to the Deposit Insurance Fund

The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.

(3) Exception for certain depository institutions

Any depository institution that becomes an insured depository institution by operation of section 1814(a) of this title shall not pay any fee.

(e) Liability of commonly controlled depository institutions

(1) In general

(A) Liability established

Any insured depository institution shall be liable for any loss incurred by the Corpora-

tion, or any loss which the Corporation reasonably anticipates incurring, after August 9, 1989, in connection with—

(i) the default of a commonly controlled insured depository institution; or

(ii) any assistance provided by the Corporation to any commonly controlled insured depository institution in danger of default.

(B) Payment upon notice

An insured depository institution shall pay the amount of any liability to the Corporation under subparagraph (A) upon receipt of written notice by the Corporation in accordance with this subsection.

(C) Notice required to be provided within 2 years of loss

No insured depository institution shall be liable to the Corporation under subparagraph (A) if written notice with respect to such liability is not received by such institution before the end of the 2-year period beginning on the date the Corporation incurred the loss.

(2) Amount of compensation; procedures

(A) Use of estimates

When an insured depository institution is in default or requires assistance to prevent default, the Corporation shall—

(i) in good faith, estimate the amount of the loss the Corporation will incur from such default or assistance;

(ii) if, with respect to such insured depository institution, there is more than 1 commonly controlled insured depository institution, estimate the amount of each such commonly controlled depository institution's share of such liability; and

(iii) advise each commonly controlled depository institution of the Corporation's estimate of the amount of such institution's liability for such losses.

(B) Procedures; immediate payment

The Corporation, after consultation with the appropriate Federal banking agency and the appropriate State chartering agency, shall—

(i) on a case-by-case basis, establish the procedures and schedule under which any insured depository institution shall reimburse the Corporation for such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution; or

(ii) require any insured depository institution to make immediate payment of the amount of such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution.

(C) Priority

The liability of any insured depository institution under this subsection shall have priority with respect to other obligations and liabilities as follows:

(i) Superiority

The liability shall be superior to the following obligations and liabilities of the depository institution:

(I) Any obligation to shareholders arising as a result of their status as shareholders (including any depository institution holding company or any shareholder or creditor of such company).

(II) Any obligation or liability owed to any affiliate of the depository institution (including any other insured depository institution), other than any secured obligation which was secured as of May 1, 1989.

(ii) Subordination

The liability shall be subordinate in right and payment to the following obligations and liabilities of the depository institution:

(I) Any deposit liability (which is not a liability described in clause (i)(II)).

(II) Any secured obligation, other than any obligation owed to any affiliate of the depository institution (including any other insured depository institution) which was secured after May 1, 1989.

(III) Any other general or senior liability (which is not a liability described in clause (i)).

(IV) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (i)).

(D) Adjustment of estimated payment

(i) Overpayment

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly controlled depository institution its pro rata share of any overpayment.

(ii) Underpayment

If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly controlled depository institution to the Corporation and shall require each such commonly controlled depository institution to make payment of any additional liability to the Corporation.

(3) Review

(A) Judicial

Actions of the Corporation shall be reviewable pursuant to chapter 7 of title 5.

(B) Administrative

The Corporation shall prescribe regulations and establish administrative procedures which provide for a hearing on the record for the review of—

(i) the amount of any loss incurred by the Corporation in connection with any insured depository institution;

(ii) the liability of individual commonly controlled depository institutions for the amount of such loss; and

(iii) the schedule of payments to be made by such commonly controlled depository institutions.

(4) Limitation on rights of private parties

To the extent the exercise of any right or power of any person would impair the ability of any insured depository institution to perform such institution's obligations under this subsection—

(A) the obligations of such insured depository institution shall supersede such right or power; and

(B) no court may give effect to such right or power with respect to such insured depository institution.

(5) Waiver authority

(A) In general

The Corporation, in its discretion, may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the Deposit Insurance Fund.

(B) Condition

During the period any exemption granted to any insured depository institution under subparagraph (A) or (C) is in effect, such insured depository institution and all other insured depository institution affiliates of such depository institution shall comply fully with the restrictions of sections 371c and 371c-1 of this title without regard to section 371c(d)(1) of this title.

(C) Limited partnerships

(i) In general

The Corporation may, in its discretion, exempt any limited partnership and any affiliate of any limited partnership (other than any insured depository institution which is a majority owned subsidiary of such partnership) from the provisions of this subsection if such limited partnership or affiliate has filed a registration statement with the Securities and Exchange Commission on or before April 10, 1989, indicating that as of the date of such filing such partnership intended to acquire 1 or more insured depository institutions.

(ii) Review and notice

Within 10 business days after the date of submission of any request for an exemption under this subparagraph together with such information as shall be reasonably requested by the Corporation, the Corporation shall make a determination on the request and shall so advise the applicant.

(6) Exclusion for institutions acquired in debt collections

Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if—

(A) 1 depository institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith; and

(B) during the period beginning on August 9, 1989, and ending upon the expiration of the exclusion, the controlling bank and all other insured depository institution affiliates of such controlling bank comply fully with the restrictions of sections 371c and 371c-1 of this title, without regard to section 371c(d)(1) of this title, in transactions with the acquired insured depository institution.

(7) Exception for certain FSLIC assisted institutions

No depository institution shall have any liability to the Corporation under this subsection as the result of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if—

(A) such affiliate was receiving cash payments from the Federal Savings and Loan Insurance Corporation under an assistance agreement or note entered into before August 9, 1989;

(B) the Federal Savings and Loan Insurance Corporation, or such other entity which has succeeded to the payment obligations of such Corporation with respect to such assistance agreement or note, is unable to continue such payments; and

(C) such affiliate—

(i) is in default or in need of assistance solely as a result of the failure to meet the payment obligations referred to in subparagraph (B); and

(ii) is not otherwise in breach of the terms of any assistance agreement or note which would authorize the Federal Savings and Loan Insurance Corporation or such other successor entity, pursuant to the terms of such assistance agreement or note, to refuse to make such payments.

(8) Commonly controlled defined

For purposes of this subsection, depository institutions are commonly controlled if—

(A) such institutions are controlled by the same company; or

(B) 1 depository institution is controlled by another depository institution.

(Sept. 21, 1950, ch. 967, §2[5], 64 Stat. 876; Pub. L. 95-369, §6(c)(7), Sept. 17, 1978, 92 Stat. 616; Pub. L. 97-320, title VII, §703(c), Oct. 15, 1982, 96 Stat. 1539; Pub. L. 101-73, title II, §§201(a), 206(a), Aug. 9, 1989, 103 Stat. 187, 195; Pub. L. 102-242, title I, §115(a), title III, §302(e)(1), (2), title V, §501(a), Dec. 19, 1991, 105 Stat. 2249, 2349, 2388; Pub. L. 102-550, title XVI, §§1605(a)(5)(B), 1607(a), Oct. 28, 1992, 106 Stat. 4085, 4089; Pub. L. 102-558, title III, §§303(b)(6)(B), 305, Oct. 28, 1992, 106 Stat. 4225, 4226; Pub. L. 103-204, §9, Dec. 17, 1993, 107 Stat. 2388; Pub. L. 103-325, title III, §319(b), title VI, §602(a)(2), (3), Sept. 23, 1994, 108 Stat. 2225, 2288; Pub. L. 104-208, div. A, title II, §§2201(a), 2702(i), 2704(d)(14)(B)-(E), Sept. 30, 1996, 110 Stat. 3009-403, 3009-483, 3009-491; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §8(a)(2)-(6), Feb. 15, 2006, 119 Stat. 3610,

3611; Pub. L. 109-351, title VII, §703, Oct. 13, 2006, 120 Stat. 1986.)

PRIOR PROVISIONS

Section is derived from subsec. (f)(2) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109-173, §8(a)(2), substituted “the Deposit Insurance Fund,” for “the Bank Insurance Fund or the Savings Association Insurance Fund.”

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

Subsec. (c)(4). Pub. L. 109-173, §8(a)(3), substituted “Deposit Insurance Fund” for “deposit insurance fund”.

Subsec. (d). Pub. L. 109-171 repealed Pub. L. 104-208, §2704(d)(14)(C), (D). See 1996 Amendment note below.

Subsec. (d)(1). Pub. L. 109-173, §8(a)(5) substituted, “the reserve ratio of the Deposit Insurance Fund” for “reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund as required by section 1817 of this title” in subpar. (A), struck out par. (1) designation and heading, redesignated subpar. (A) as par. (1) and realigned margin, and struck out subpar. (B), the text of which read as follows: “The fee paid by the depository institution shall be credited to the Bank Insurance Fund if the depository institution becomes a Bank Insurance Fund member, and to the Savings Association Insurance Fund if the depository institution becomes a Savings Association Insurance Fund member.” Former subpar. (C) redesignated par. (3).

Subsec. (d)(2). Pub. L. 109-173, §8(a)(4), (5)(B), added par. (2) and struck out former par. (2) which related to conversion transactions by insured depository institutions.

Subsec. (d)(3). Pub. L. 109-173, §8(a)(4), (5)(D), redesignated par. (1)(C) of subsec. (d) as (3), realigned margin, and struck out former par. (3) which related to optional conversions by insured depository institutions subject to special rules on deposit insurance payments.

Subsec. (e)(5)(A). Pub. L. 109-173, §8(a)(6)(A), substituted “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”.

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

Subsec. (e)(6) to (9). Pub. L. 109-173, §8(a)(6)(B), (C), redesignated pars. (7) to (9) as (6) to (8), respectively, and struck out heading and text of former par. (6). Text read as follows: “During the 5-year period beginning on August 9, 1989—

“(A) no Savings Association Insurance Fund member shall have any liability to the Corporation under this subsection arising out of assistance provided by the Corporation or any loss incurred by the Corporation as a result of the default of a Bank Insurance Fund member which was acquired by such Savings Association Insurance Fund member or any affiliate of such member before August 9, 1989; and

“(B) no Bank Insurance Fund member shall have such liability with respect to assistance provided by or loss incurred by the Corporation as a result of the default of a Savings Association Insurance Fund member which was acquired by such Bank Insurance Fund member or any affiliate of such member before August 9, 1989.”

Pub. L. 109-171 repealed Pub. L. 104-208, §2704(d)(14)(E)(ii), (iii). See 1996 Amendment note below.

Subsec. (e)(8)(A). Pub. L. 109-351, §703, which directed general amendment of par. (9)(A) of subsec. (e), was executed by making the amendment to par. (8)(A) to reflect the probable intent of Congress and amendment by 109-173, §8(a)(6)(B), (C). Prior to amendment, subpar. (A) read as follows: “such institutions are controlled by the same depository institution holding company (including any company required to file reports pursuant to section 1843(f)(6) of this title); or”.

1996—Subsec. (b)(5). Pub. L. 104-208, §2704(d)(14)(B), which directed substitution of “Deposit Insurance Fund,” for “the Bank Insurance Fund or the Savings Association Insurance Fund;”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d). Pub. L. 104-208, §2704(d)(14)(C) and (D), which directed the amendment of subsec. (d) by striking out par. (1) designation and heading, redesignating subpar. (A) of par. (1) as par. (1), realigning margin, and substituting “the reserve ratio of the Deposit Insurance Fund” for “reserve ratios in the Bank Insurance Fund and the Savings Association Insurance Fund”, striking out subpar. (B) of par. (1) and pars. (2) and (3) and adding new par. (2), and redesignating subpar. (C) of par. (1) as par. (3) and realigning margin, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d)(3)(A). Pub. L. 104-208, §2201(a)(1), substituted “if the transaction is approved by” for “with the prior written approval of”.

Subsec. (d)(3)(C). Pub. L. 104-208, §2702(i)(1), substituted “Except as provided in subparagraph (K), the adjusted attributable deposit amount” for “The adjusted attributable deposit amount” in introductory provisions.

Subsec. (d)(3)(E). Pub. L. 104-208, §2201(a)(2), added cl. (iii), redesignated former cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cls. (i) and (iv), which directed review of any application under the procedures and factors set forth in section 1828(c) of this title and disapproval of any application unless depository institution met all applicable capital requirements, respectively.

Subsec. (d)(3)(G) to (J). Pub. L. 104-208, §2201(a)(3), (4), redesignated subpars. (H) to (J) as (G) to (I), respectively and struck out former subpar. (G) which related to expedited approval of acquisitions.

Subsec. (d)(3)(K). Pub. L. 104-208, §2702(i)(2), added subpar. (K).

Subsec. (e)(5)(A). Pub. L. 104-208, §2704(d)(14)(E)(i), which directed substitution of “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (e)(6) to (9). Pub. L. 104-208, §2704(d)(14)(E)(ii), (iii), which directed striking out par. (6) and redesignating pars. (7) to (9) as (6) to (8), respectively, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (b)(5). Pub. L. 103-325, §602(a)(2), substituted comma for semicolon at end.

Subsec. (d)(3)(A). Pub. L. 103-325, §319(b)(1), redesignated cl. (i) formerly entitled “In general” as subpar. (A), inserted comma after “Notwithstanding paragraph (2)(A)”, and struck out heading and text of cl. (ii). Text read as follows: “If, in connection with any transaction referred to in clause (i), the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the prior written approval of the Board shall be required for such transaction in addition to the approval of any agency referred to in clause (i).”

Subsec. (d)(3)(E)(i). Pub. L. 103-325, §319(b)(2)(A), struck out “(and, in the event the acquiring, assuming, or resulting depository institution is a Bank Insurance Fund member which is a subsidiary of a bank holding company, the Board)” after “responsible agency”.

Subsec. (d)(3)(E)(ii). Pub. L. 103-325, §319(b)(2)(B), struck out “or Board” after “responsible agency”.

Subsec. (d)(3)(E)(iv). Pub. L. 103-325, §319(b)(2)(C), struck out “, and the appropriate Federal banking agency for any depository institution holding company,” after “responsible agency”, “each” before “such agency determines”, and “, and any depository institution holding company which controls such institution,” after “resulting depository institution”.

Subsec. (d)(3)(F). Pub. L. 103-325, §319(b)(3), substituted “A Bank” for “The Board may not approve any transaction under subparagraph (A) in which the acquiring, assuming, or resulting depository institution is a Bank” and “may not be the acquiring, assuming, or resulting depository institution in a transaction under subparagraph (A) unless” for “unless the Board determines that”.

Subsec. (d)(3)(K). Pub. L. 103-325, §319(b)(4), struck out heading and text of subpar. (K). Text read as follows: “For purposes of this paragraph, the term ‘Board’ (other than when such term appears in connection with a reference to the Board of Directors) means the Board of Governors of the Federal Reserve System.”

Subsec. (e)(4). Pub. L. 103-325, §602(a)(3), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned margins.

1993—Subsec. (d)(2)(A)(ii). Pub. L. 103-204, §9(a), substituted “before the later of the end” for “before the end” and inserted before period at end “or the date on which the Savings Association Insurance Fund first meets or exceeds the designated reserve ratio for such fund”.

Subsec. (d)(2)(B)(v). Pub. L. 103-204, §9(b), added cl. (v).

Subsec. (d)(2)(C)(ii), (iii), (3)(I)(i). Pub. L. 103-204, §9(c), substituted “moratorium period established by” for “5-year period referred to in”.

1992—Subsec. (d)(3)(B). Pub. L. 102-558, §303(b)(6)(B), amended directory language of Pub. L. 102-242, §302(e). See 1991 amendment note below. Pub. L. 102-550, §1605(a)(5)(B), which contained an identical amendment, was repealed, effective Oct. 28, 1992, by Pub. L. 102-558, §305, set out as a Repeal of Duplicative Provisions note below.

Subsec. (d)(3)(K). Pub. L. 102-550, §1607(a), added subpar. (K).

1991—Pub. L. 102-242, §115(a), amended section catchline.

Subsec. (a). Pub. L. 102-242, §115(a), added subsec. (a) consisting of pars. (1) to (6) and struck out former subsec. (a) relating to application for insurance, which consisted of pars. (1) to (7).

Subsec. (d)(3). Pub. L. 102-242, §501(a), amended par. (3) generally, substituting present provisions consisting of subpars. (A) to (J) for provisions related to optional conversion through merger, which consisted of subpars. (A) to (G).

Subsec. (d)(3)(B)(i). Pub. L. 102-242, §302(e)(1), as amended by Pub. L. 102-558, §303(b)(6)(B), substituted “deposits” for “average assessment base” and “shall be treated as deposits which are insured by the Savings Association Insurance Fund.” for “shall—

“(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Savings Association Insurance Fund members;

“(II) not be taken into account for purposes of any assessment under section 1817 of this title for Bank Insurance Fund members; and

“(III) be treated as deposits which are insured by the Savings Association Insurance Fund.”

Subsec. (d)(3)(B)(ii). Pub. L. 102-242, §302(e)(2), as added by Pub. L. 102-558, §303(b)(6)(B), substituted “deposits” for “average assessment base” and “shall be treated as deposits which are insured by the Bank Insurance Fund.” for “shall—

“(I) be subject to assessment at the assessment rate applicable under section 1817 of this title for Bank Insurance Fund members;

“(II) not be taken into account for purposes of any assessment under section 1817 of this title for Savings Association Insurance Fund members; and

“(III) be treated as deposits which are insured by the Bank Insurance Fund.”

1989—Pub. L. 101-73, §201(a), substituted references to insured depository institutions for references to insured banks wherever appearing.

Subsec. (a). Pub. L. 101-73, §206(a)(1)–(4), inserted heading, designated existing provisions as par. (1), inserted par. (1) heading, and substituted “Any” for

“Subject to the provisions of this chapter, any”, inserted “and State savings association” after “any State nonmember bank” and after “such State nonmember bank”, “or savings association” after “such bank”, and “or savings association, and in the case of an application by a State savings association, the Corporation shall notify the Director of the Office of Thrift Supervision of the Corporation’s approval of such application” after “books of the bank”, and added pars. (2) to (7).

Subsec. (b)(4). Pub. L. 101-73, §206(a)(5), inserted “and fitness” after “character”.

Subsec. (b)(5) to (8). Pub. L. 101-73, §206(a)(6), added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsecs. (d), (e). Pub. L. 101-73, §206(a)(7), added subsecs. (d) and (e).

1982—Subsec. (a). Pub. L. 97-320 inserted provision relating to the determination before the application of an industrial bank or similar institution is approved that it is chartered and operating under provisions substantially comparable to those applicable to banks operating in the same State.

1978—Pub. L. 95-369 designated existing provision as subsec. (a) and added subsecs. (b) and (c).

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 section 2704(d)(14)(B)–(E) 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 1992 AMENDMENTS

Amendment by section 303(b)(6)(B) of Pub. L. 102-558 deemed to have become effective Mar. 1, 1992, see section 304 of Pub. L. 102-558, set out as a note under section 4502 of Title 50, War and National Defense.

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, except that where amendment is to any provision of law added or amended by Pub. L. 102-242 effective after Dec. 19, 1992, then amendment by Pub. L. 102-550 effective on effective date of amendment by Pub. L. 102-242, see section 1609 of Pub. L. 102-550, set out as a note under section 191 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 302(e)(1), (2) of Pub. L. 102-242 effective on earlier of 180 days after date on which final regulations promulgated in accordance with section 302(c) of Pub. L. 102-242, set out as a note under section 1817 of this title, become effective or Jan. 1, 1994, see section 302(g) of Pub. L. 102-242, set out as a note under section 1817 of this title.

Pub. L. 102-242, title V, §501(b), Dec. 19, 1991, 105 Stat. 2391, provided that: “The amendment made by subsection (a) to section 5(d)(3)(C) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)(C)] shall apply with respect to semiannual periods beginning after the date of the enactment of this Act [Dec. 19, 1991].”

REPEAL OF DUPLICATIVE PROVISIONS

Pub. L. 102-558, title III, §305, Oct. 28, 1992, 106 Stat. 4226, provided that: “In the event of the enactment of H.R. 5334 (An Act to amend and extend certain laws relating to housing and community development, and for other purposes) [enacted as Pub. L. 102-550], the follow-

ing provisions of that Act, and the amendments made by such provisions, are repealed, effective on the date of enactment of this Act [Oct. 28, 1992]:

“(1) Section 1603(a)(3) of such Act [amending section 1817 of this title and enacting provisions set out as a note under section 1817 of this title].

“(2) Section 1604(a)(11) of such Act [amending section 3104 of this title].

“(3) Paragraphs (1), (2), and (3) of section 1604(b) of such Act [amending sections 1817, 1834, and 1834a of this title].

“(3) [sic] Paragraphs (2) through (7) of section 1605(a) of such Act [amending sections 1815, 1817, 1818, 1820, 1834, and 1834a of this title and enacting provisions set out as notes under sections 1817, 1834, and 1834a of this title].”

MORATORIUM ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956

Pub. L. 111-203, title VI, §603(a), July 21, 2010, 124 Stat. 1597, provided that, effective until 3 years after July 21, 2010, the Federal Deposit Insurance Corporation would not approve an application for deposit insurance received after Nov. 23, 2009, for an industrial bank, a credit card bank, or a trust bank owned by a commercial firm and would disapprove, with certain exceptions, a change in control of such a bank that would result in control of the industrial bank, credit card bank, or trust bank by a commercial firm.

DEPOSIT OF FUNDS INTO DEPOSIT INSURANCE FUND

Pub. L. 109-173, §8(a)(4), Feb. 15, 2006, 119 Stat. 3610, provided in part that: “any funds resulting from the application of such paragraph (2) [of subsec. (d) of this section] prior to its repeal [see 2006 Amendment note above] shall be deposited into the general fund of the Deposit Insurance Fund”.

NEWLY INSURED THRIFT PROVISION

Pub. L. 101-73, title II, §206(b), Aug. 9, 1989, 103 Stat. 205, provided that: “Any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(c)(2)], as added by section 204(c) of this Act)—

“(1) which was an insured institution (as defined in section 401(a) of the National Housing Act [12 U.S.C. 1724(a)], as in effect before the date of the enactment of this Act [Aug. 9, 1989]) on the day before the date of the enactment of this Act;

“(2) the board of directors of which determined, before April 1, 1987, to terminate such association’s status as an insured institution (as so defined) as evidenced in sworn minutes of the board of directors meeting held before such date;

“(3) had insured deposits of less than \$11,000,000 on April 1, 1987; and

“(4) was an insured institution (as so defined) for less than 1 year as of April 1, 1987, may cease to be a Savings Association Insurance Fund member and become a Bank Insurance Fund member at any time during the 2-year period beginning on the date of the enactment of this Act without the approval of the Federal Deposit Insurance Corporation under section 5(d)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(2)] (as added by subsection (a) of this section) and without incurring any liability for any exit or entrance fee imposed under such section 5(d)(2).”

DEFINITION OF “COMMERCIAL FIRM”

Pub. L. 111-203, title VI, §602, July 21, 2010, 124 Stat. 1596, provided that: “For purposes of this title [see Short Title note set out under section 1811 of this title], a company is a ‘commercial firm’ if the annual gross revenues derived by the company and all of its affiliates from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))) and, if applicable, from

the ownership or control of one or more insured depository institutions, represent less than 15 percent of the consolidated annual gross revenues of the company.’’

[For definitions of terms used in section 602 of Pub. L. 111-203, set out above, see section 5301 of this title.]

§ 1816. Factors to be considered

The factors that are required, under section 1814 of this title, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 1814 of this title and that are required, under section 1815 of this title, to be considered by the Board of Directors in connection with any determination by such Board pursuant to section 1815 of this title are the following:

- (1) The financial history and condition of the depository institution.
- (2) The adequacy of the depository institution's capital structure.
- (3) The future earnings prospects of the depository institution.
- (4) The general character and fitness of the management of the depository institution.
- (5) The risk presented by such depository institution to the Deposit Insurance Fund.
- (6) The convenience and needs of the community to be served by such depository institution.
- (7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.

(Sept. 21, 1950, ch. 967, §2[6], 64 Stat. 876; Pub. L. 101-73, title II, §207, Aug. 9, 1989, 103 Stat. 206; Pub. L. 104-208, div. A, title II, §2704(d)(14)(F), Sept. 30, 1996, 110 Stat. 3009-491; Pub. L. 109-171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109-173, §8(a)(7), Feb. 15, 2006, 119 Stat. 3611.)

PRIOR PROVISIONS

Section is derived from subsec. (g) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2006—Par. (5). Pub. L. 109-173 substituted “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”.

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

1996—Par. (5). Pub. L. 104-208, §2704(d)(14)(F), which directed substitution of “Deposit Insurance Fund” for “Bank Insurance Fund or the Savings Association Insurance Fund”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1989—Pub. L. 101-73 amended section generally. Prior to amendment, section read as follows: “The factors to be enumerated in the certificate required under section 1814 of this title and to be considered by the Board of Directors under section 1815 of this title shall be the following: The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this chapter.”

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109-173, set out as a note under section 1813 of this title.

Amendment by Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins

after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note under section 1821 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Jan. 1, 1999, if no insured depository institution is a savings association on that date, see section 2704(c) of Pub. L. 104-208, formerly set out as a note under section 1821 of this title.

§ 1817. Assessments

(a) Reports of condition; access to reports

(1) Each insured State nonmember bank and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 1818(i)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any