

banking agency or State bank supervisor that issued the cease and desist order (or other formal enforcement order) or memorandum of understanding, as appropriate, does not object to the conversion or the plan to address the significant supervisory matter;

“(3) after conversion of the insured depository institution, the appropriate Federal banking agency after the conversion implements such plan; and

“(4) in the case of a final enforcement action by a State Attorney General, approval of the conversion is conditioned on compliance by the insured depository institution with the terms of such final enforcement action.”

[For definitions of terms used in section 612(d) of Pub. L. 111-203, set out above, see section 5301 of this title.]

#### NOTIFICATION OF PENDING ENFORCEMENT ACTIONS

Pub. L. 111-203, title VI, §612(e), July 21, 2010, 124 Stat. 1613, provided that:

“(1) COPY OF CONVERSION APPLICATION.—At the time an insured depository institution files a conversion application, the insured depository institution shall transmit a copy of the conversion application to—

“(A) the appropriate Federal banking agency for the insured depository institution; and

“(B) the Federal banking agency that would be the appropriate Federal banking agency of the insured depository institution after the proposed conversion.

“(2) NOTIFICATION AND ACCESS TO INFORMATION.—Upon receipt of a copy of the application described in paragraph (1), the appropriate Federal banking agency for the insured depository institution proposing the conversion shall—

“(A) notify the Federal banking agency that would be the appropriate Federal banking agency for the institution after the proposed conversion in writing of any ongoing supervisory or investigative proceedings that the appropriate Federal banking agency for the institution proposing to convert believes is likely to result, in the near term and absent the proposed conversion, in a cease and desist order (or other formal enforcement order) or memorandum of understanding with respect to a significant supervisory matter; and

“(B) provide the Federal banking agency that would be the appropriate Federal banking agency for the institution after the proposed conversion access to all investigative and supervisory information relating to the proceedings described in subparagraph (A).”

[For definitions of terms used in section 612(e) of Pub. L. 111-203, set out above, see section 5301 of this title.]

### § 36. Branch banks

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

#### (a) Lawful and continuous operation

A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

#### (b) Converted State banks

(1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office—

(A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Com-

troller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank on February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

(2) A national bank (referred to in this paragraph as the “resulting bank”), resulting from the consolidation of a national bank (referred to in this paragraph as the “national bank”) under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as—

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency approves of its continued operation after the consolidation;

(B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

(C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the State bank immediately prior to consolidation.

(3) As used in this subsection, the term “consolidation” includes a merger.

#### (c) New branches

A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed

by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided*, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.

**(d) Branches resulting from interstate merger transactions**

A national bank resulting from an interstate merger transaction (as defined in section 1831u(f)(6)<sup>1</sup> of this title) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 1831u of this title.

**(e) Exclusive authority for additional branches**

**(1) In general**

Effective June 1, 1997, a national bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in subsection (g)(3)(B)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of such branch in such State by such national bank is authorized under this section or section 1823(f), 1823(k), or 1831u of this title.

**(2) Retention of branches**

In the case of a national 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 subsection (g)(3)(B)) 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 paragraph (1), to acquire, establish, or commence to operate a branch in such State if—

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

(B) 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 Federal Deposit Insurance Corporation under section 1823(c) of this title.

**(f) Law applicable to interstate branching operations**

**(1) Law applicable to national bank branches**

**(A) In general**

The laws of the host State regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches shall apply to any branch in the host State of an out-of-State national bank to the same extent as such State laws apply to a branch of a bank chartered by that State, except—

(i) when Federal law preempts the application of such State laws to a national bank; or

(ii) when the Comptroller of the Currency determines that the application of such State laws would have a discriminatory effect on the branch in comparison with the effect the application of such State laws would have with respect to branches of a bank chartered by the host State.

**(B) Enforcement of applicable State laws**

The provisions of any State law to which a branch of a national bank is subject under this paragraph shall be enforced, with respect to such branch, by the Comptroller of the Currency.

**(C) Review and report on actions by Comptroller**

The Comptroller of the Currency shall conduct an annual review of the actions it has taken with regard to the applicability of State law to national banks (or their branches) during the preceding year, and shall include in its annual report required under section 14 of this title the results of the review and the reasons for each such action. The first such review and report after July 3, 1997, shall encompass all such actions taken on or after January 1, 1992.

**(2) Treatment of branch as bank**

All laws of a host State, other than the laws regarding community reinvestment, consumer protection, fair lending, establishment of intrastate branches, and the application or administration of any tax or method of taxation, shall apply to a branch (in such State) of an out-of-State national bank to the same extent as such laws would apply if the branch were a national bank the main office of which is in such State.

**(3) Rule of construction**

No provision of this subsection may be construed as affecting the legal standards for preemption of the application of State law to national banks.

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

**(g) State “opt-in” election to permit interstate branching through de novo branches****(1) In general**

Subject to paragraph (2), the Comptroller of the Currency may approve an application by a national 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—

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

(B) the conditions established in, or made applicable to this paragraph by, paragraph (2) are met.

**(2) Conditions on establishment and operation of interstate branch****(A) Establishment**

An application by a national 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 an interstate merger transaction is subject under paragraphs (1), (3), and (4) of section 1831u(b) of this title.

**(B) Operation**

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

**(3) Definitions**

The following definitions shall apply for purposes of this section:

**(A) De novo branch**

The term “de novo branch” means a branch of a national bank which—

(i) is originally established by the national 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.

**(B) Home State**

The term “home State” means the State in which the main office of a national bank is located.

**(C) Host State**

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.

**(h) Repealed. Pub. L. 104–208, div. A, title II, § 2204, Sept. 30, 1996, 110 Stat. 3009–405****(i) Prior approval of branch locations**

No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

**(j) “Branch” defined**

The term “branch” as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent. The term “branch”, as used in this section, does not include an automated teller machine or a remote service unit.

**(k) Branches in foreign countries, dependencies, or insular possessions**

This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as amended [12 U.S.C. 601 et seq.], authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

**(l) “State bank” and “bank” defined**

The words “State bank,” “State banks,” “bank,” or “banks,” as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

(R.S. § 5155; Feb. 25, 1927, ch. 191, § 7, 44 Stat. 1228; June 16, 1933, ch. 89, § 23, 48 Stat. 189; Aug. 23, 1935, ch. 614, title III, § 305, 49 Stat. 708; July 15, 1952, ch. 753, § 2(b), 66 Stat. 633; Pub. L. 87–721, Sept. 28, 1962, 76 Stat. 667; Pub. L. 103–328, title I, §§ 102(b)(1), 103(a), Sept. 29, 1994, 108 Stat. 2349, 2352; Pub. L. 104–208, div. A, title II, §§ 2204, 2205(a), Sept. 30, 1996, 110 Stat. 3009–405; Pub. L. 105–24, § 2(b), July 3, 1997, 111 Stat. 239; Pub. L. 111–203, title VI, § 613(a), July 21, 2010, 124 Stat. 1614.)

## REFERENCES IN TEXT

Section 1831u of this title, referred to in subsec. (d), was subsequently amended, and subsec. (f)(6) of section 1831u no longer defines the term “interstate merger transaction”. However, such term is defined elsewhere in that section.

Section 25 of the Federal Reserve Act, as amended, referred to in subsec. (k), is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title.

## CODIFICATION

R.S. § 5155 derived from act Mar. 3, 1865, ch. 78, § 7, 13 Stat. 484.

## AMENDMENTS

2010—Subsec. (g)(1)(A). Pub. L. 111–203 amended subpar. (A) generally. Prior to amendment, subpar. (A) 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”.

1997—Subsec. (f)(1)(C). Pub. L. 105–24 added subpar. (C).

1996—Subsec. (h). Pub. L. 104-208, §2204, struck out subsec. (h) which read as follows: “The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.”

Subsec. (j). Pub. L. 104-208, §2205(a), inserted at end “The term ‘branch’, as used in this section, does not include an automated teller machine or a remote service unit.”

1994—Subsecs. (d) to (f). Pub. L. 103-328, §102(b)(1)(B), added subsecs. (d) to (f). Former subsecs. (d) to (f) redesignated (h) to (j), respectively.

Subsec. (g). Pub. L. 103-328, §103(a), added subsec. (g). Pub. L. 103-328, §102(b)(1)(A), redesignated subsec. (g) as (k).

Subsecs. (h) to (l). Pub. L. 103-328, §102(b)(1)(A), redesignated subsecs. (d) to (h) as (h) to (l), respectively.

1962—Subsec. (b). Pub. L. 87-721 substituted provisions permitting a national bank resulting from the conversion of a State bank to retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office might be established as a new branch of the resulting national bank, and is approved by the Comptroller for continued operation as a branch of the resulting bank, or any office which was a branch of any bank on Feb. 25, 1927, or any office which is approved by the Comptroller for continued operation as a branch, and a national bank resulting from consolidation of a national bank under whose charter the consolidation is effected with another bank or banks to retain and operate any office which, immediately prior to consolidation, was in operation as a main office or branch office of any bank (other than the national bank) participating in the consolidation if it might be established as a new branch of the resulting bank, and if the Comptroller approves of its continued operation, or was in operation as a branch of any bank participating in the consolidation and which, on Feb. 25, 1927, was in operation as a branch of any bank, or was in operation as a branch of the national bank and which, on Feb. 25, 1927, was not in operation as a branch of any bank, if the Comptroller approves of its continued operation, for provisions which permitted State banks converted into or consolidated with national banking associations after Feb. 25, 1927, or two or more national banking associations which are consolidated, to retain and operate only those branches which may have been in lawful operation on Feb. 25, 1927, and inserted provisions prohibiting the Comptroller from granting approval under clauses (1)(C) and (2)(C) if a State bank resulting from the conversion or consolidation would be prohibited by law of the State from retaining and operating as a branch an identically situated office which was a branch of the national bank or State bank immediately prior to the conversion or consolidation.

1952—Subsec. (c). Act July 15, 1952, struck out the minimum capital requirement for the establishment of branches by national banks.

1935—Subsec. (c). Act Aug. 23, 1935, inserted second sentence and substituted “Except as provided in the immediately preceding sentence, no” for “No” in last sentence.

1933—Subsecs. (c), (d). Act June 16, 1933, amended subsecs. (c) and (d).

1927—Act Feb. 25, 1927, amended section generally.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

#### 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.

#### RIGHT OF STATE TO OPT OUT

Nothing in Pub. L. 105-24 to alter right of States under section 525 of Pub. L. 96-221, see section 3 of Pub. L. 105-24, set out as a note under section 1831a of this title.

#### APPLICABILITY OF MCFADDEN ACT TO PRESENT FINANCIAL ENVIRONMENT; REPORT AND RECOMMENDATIONS BY PRESIDENT TO CONGRESS

Pub. L. 95-369, §14, Sept. 17, 1978, 92 Stat. 625, provided for a report to Congress by the President, not later than one year after Sept. 17, 1978, containing recommendations concerning the applicability of the McFadden Act [Feb. 25, 1927, ch. 191, 44 Stat. 1224] to the then current financial, banking, and economic environment.

### § 37. Associations governed by chapter

The provisions of chapters 2, 3, and 4 of title 62 of the Revised Statutes, which are expressed without restrictive words, as applying to “national banking associations,” or to “associations,” apply to all associations organized to carry on the business of banking under any Act of Congress.

(R.S. §5157.)

#### REFERENCES IN TEXT

Chapters 2, 3, and 4 of title 62 of the Revised Statutes, referred to in text, was in the original “chapters two, three, and four of this Title,” meaning chapters 2, 3, and 4 of title 62 of the Revised Statutes, consisting of R.S. §§5157 to 5244, which are classified to this section and sections 16, 26, 27, 43, 55, 56, 60, 62, 81, 83 to 86, 91, 93, 93a, 94, 141 to 144, 161, 164, 181, 182, 192 to 194, 196, 481 to 485, 501, 541, and 582 of this title. 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. §§5157 to 5244 to the Code, see Tables.

### § 38. The National Bank Act

The Act entitled “An Act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof,” approved June 3, 1864, shall be known as “The National Bank Act.”

(June 20, 1874, ch. 343, §1, 18 Stat. 123.)

#### REFERENCES IN TEXT

The National Bank Act, referred to in text, is act June 3, 1864, ch. 106, 13 Stat. 99, as amended. The act was incorporated into the Revised Statutes as R.S. §§324 to 327, 328 to 331, 333, 380, 563, 629, 736, 884, 885, 3473, 3475, 3651, 5133 to 5136, 5137 to 5154, 5156, 5158 to 5170, 5172, 5173, 5175, 5177, 5182 to 5184, 5187, 5189, 5190 to 5192, 5195 to 5204, 5206, 5209 to 5211, 5214 to 5215, 5219 to 5222, 5224 to 5239, 5240 to 5242, 5417, which are classified to sections 1 to 4, 8, 11 to 14, 21, 22 to 24, 26, 27, 29, 35, 39, 52, 53, 56, 57, 59 to 62, 66, 71, 72 to 76, 81, 84 to 86, 90, 91, 93, 94, 141 to 144, 161, 165, 181, 182, 192 to 194, 196, 481 to 485, 541, and 548 of this title, section 197 of Title 19, Customs Duties, and section 543 of former Title 31, Money and Finance. See, also, sections 8, 333, 334, 471, 472, 656, and 1005 of Title 18, Crimes and Criminal Procedure, and sections 507, 1348, 1394, and 1733 of Title 28, Judiciary and Judicial Procedure.

### § 39. Reservation of rights of associations organized under Act of 1863

Nothing in title 62 of the Revised Statutes shall affect any appointments made, acts done, or proceedings had or commenced prior to the