§1831d. State-chartered insured depository institutions and insured branches of foreign banks

(a) Interest rates

In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

(b) Interest overcharge; forfeiture; interest payment recovery

If the rate prescribed in subsection (a) exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

(Sept. 21, 1950, ch. 967, §2[27], as added Pub. L. 96–221, title V, §521, Mar. 31, 1980, 94 Stat. 164; amended Pub. L. 100–86, title I, §101(g)(2), Aug. 10, 1987, 101 Stat. 563; Pub. L. 101–73, title II, §201(a), Aug. 9, 1989, 103 Stat. 187.)

Prior Provisions

Provisions similar to this section were contained in section 1831a of this title prior to its repeal by Pub. L. 96–221.

Amendments

1989—Subsec. (a). Pub. L. 101–73 substituted "insured depository institutions" for "insured banks".

1987—Subsec. (a). Pub. L. 100–86 struck out "and insured mutual savings banks" after "insured savings banks".

Effective Date

Section applicable only with respect to loans made in any State during the period beginning on April 1, 1980, and ending on the date, on or after April 1, 1980, on which such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want this section to apply with respect to loans made in such State, except that this section shall apply to a loan made on or after the date such law is adopted or such certification is made if such loan is made pursuant to a commitment to make such loan which was entered into on or after April 1, 1980, and prior to the date on which such law is adopted or such certification is made, see section 525 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1785 of this title.

Choice of Highest Applicable Interest Rate

In any case in which one or more provisions of, or amendments made by, title V of Pub. L. 96–221, section 1735f–7 of this title, or any other provisions of law, including section 85 of this title, apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate, see section 528 of Pub. L. 96–221, set out as a note under section 1735f–7a of this title.

Definition of "State"

For purposes of this section, the term "State" to include the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, see section 527 of Pub. L. 96–221, set out as a note under section 1735f–7a of this title.

§1831e. Activities of savings associations

(a) In general

On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

(1) the Corporation has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and

(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(b) Differences of magnitude between State and Federal powers

Notwithstanding subsection (a)(1), if an activity (other than an activity described in section 1464(c)(2)(B) of this title) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if—

(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the Deposit Insurance Fund; and

(2) the savings association chartered under State law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(c) Equity investments by State savings associations

(1) In general

Notwithstanding subsections (a) and (b), a savings association chartered under State law

may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

(2) Exception for service corporations

Paragraph (1) does not prohibit a savings association from acquiring or retaining shares of one or more service corporations if—

(A) the Corporation has determined that no significant risk to the Deposit Insurance Fund is posed by—

(i) the amount that the association proposes to acquire or retain; or

(ii) the activities in which the service corporation engages; and

(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 1464(t) of this title.

(3) Transition rule

(A) In general

The Corporation shall require any savings association to divest any equity investment the retention of which is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

(B) Treatment of noncompliance during divestment

With respect to any equity investment held by any savings association on May 1, 1989, the savings association shall be deemed not to be in violation of the prohibition in paragraph (1) or (2) on retaining such investment so long as the savings association complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such investments.

(d) Corporate debt securities

(1) In general

No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security that does not meet standards of credit-worthiness as established by the Corporation.

(2) Exception for securities held by qualified affiliate

Paragraph (1) shall not apply with respect to any corporate debt security which is acquired and retained by any qualified affiliate of a savings association.

(3) Definitions

For purposes of this section—

(A) Qualified affiliate

The term ''qualified affiliate'' means—

(i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and

(ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital.

(B) Certain securities not included

The term ''corporate debt security that does not meet standards of credit-worthiness as established by the Corporation'' does not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraph (D), (E), or (F) of section 1464(c)(1) of this title.

(e) Transfer of corporate debt security in exchange for a qualified note

(1) Acquisition of note

Notwithstanding subsections (a), (b), and (c) of section 1464[1] of this title and any other provision of Federal or State law governing extensions of credit by savings associations, any insured savings association, and any subsidiary of any insured savings association, that, on August 9, 1989, holds any corporate debt security that does not meet standards of credit-worthiness as established by the Corporation may acquire a qualified note in exchange for the transfer of such security to—

(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,

if the conditions of paragraph (2) are met.

(2) Conditions for exchange of security for qualified note

The conditions of this paragraph are met if—

(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date—

(i) remains in compliance with applicable capital requirements; or

(ii) adopts and complies with a capital plan acceptable to the Comptroller of the Currency or the Corporation, as appropriate;

(B) the company to which the corporate debt security that does not meet standards of credit-worthiness established by the Corporation is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

(C) before the end of the 90-day period beginning on August 9, 1989, the insured savings association notifies the Comptroller of the Currency or the Corporation, as appropriate, of such association's intention to transfer the corporate debt security that does not meet standards of credit-worthiness established by the Corporation to the savings and loan holding company or the subsidiary of such holding company;

(D) the transfer of the corporate debt security that does not meet standards of credit-worthiness established by the Corporation is completed—

[1] So in original. Probably should be section ''1468''.

(i) before the end of the 1-year period beginning on August 9, 1989, in the case of an insured savings association that, as of August 9, 1989, is controlled by a savings and loan holding company; or

(ii) before the end of the 2-year period beginning on August 9, 1989, in the case of a savings association that is not, as of August 9, 1989, a subsidiary of a savings and loan holding company;

(E) the insured savings association receives in exchange for the corporate debt security that does not meet standards of credit-worthiness established by the Corporation the fair market value of such security;

(F) the Comptroller of the Currency or the Corporation, as appropriate has—

(i) approved the transaction; and

(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security that does not meet standards of credit-worthiness established by the Corporation and is in compliance with the provisions of this subsection; and

(G) any gain on the sale of the corporate debt security that does not meet standards of credit-worthiness established by the Corporation is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of the transferred corporate debt security that does not meet standards of credit-worthiness established by the Corporation as carried on the accounts of the insured savings association immediately prior to the transfer.

(3) "Qualified note" defined

The term ''qualified note'' means any note that—

(A) is at all times fully secured by the corporate debt security that does not meet standards of credit-worthiness established by the Corporation transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Comptroller of the Currency or the Corporation, as appropriate;

(B) contains provisions acceptable to the Comptroller of the Currency or the Corporation, as appropriate, that would—

(i) prevent any action to encumber or impair the value of the collateral referred to in subparagraph (A); and

(ii) allow the sale of the corporate debt security that does not meet standards of credit-worthiness established by the Corporation if the proceeds of the sale are reinvested in assets of equivalent value;

(C) is on market terms, including interest rate, which must in all cases be above the insured savings association's borrowing rate for similar term funds;

(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year of repayment were fixed throughout the amortization period;

(F) is fully guaranteed by each holding company of the insured savings association that acquires such note; and

(G) is repaid in full in cash in accordance with its terms and this subsection.

(4) Failure to repay on schedule

The exemption provided by this subsection from subsections (a), (b), and (c) of section 1468 of this title and any other applicable provision of Federal or State law shall terminate immediately if the insured savings association or any affiliate of such association fails to comply with the terms of the qualified note or this subsection.

(f) Determinations

The Corporation shall make determinations under this section by regulation or order.

(g) "Activity" defined

For purposes of subsections (a) and (b)—

(1) In general

The term ''activity'' includes acquiring or retaining any investment.

(2) Divestiture of certain assets

Notwithstanding paragraph (1), subsections (a) and (b) shall not be construed to require a savings association to divest itself of any assets acquired before August 9, 1989.

(h) Other authority not affected

This section may not be construed as limiting—

(1) any other authority of the Corporation; or

(2) any authority of the Comptroller of the Currency, of the Corporation, or of a State to impose more stringent restrictions.

(Sept. 21, 1950, ch. 967, §2[28], as added Pub. L. 101–73, title II, §222, Aug. 9, 1989, 103 Stat. 269; amended Pub. L. 102–242, title I, §151(a)(3), Dec. 19, 1991, 105 Stat. 2284; Pub. L. 103–325, title VI, §602(a)(56)–(58), Sept. 23, 1994, 108 Stat. 2290, 2291; Pub. L. 104–208, div. A, title II, §2704(d)(14)(X), Sept. 30, 1996, 110 Stat. 3009–494; Pub. L. 109–171, title II, §2102(b), Feb. 8, 2006, 120 Stat. 9; Pub. L. 109–173, §8(a)(32), Feb. 15, 2006, 119 Stat. 3615; Pub. L. 111–203, title III, §363(9), title IX, §939(a)(2), (3), July 21, 2010, 124 Stat. 1555, 1885.)

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203, §939(a)(2)(A), struck out ''not of investment grade'' after ''securities'' in heading.

Subsec. (d)(1). Pub. L. 111–203, §939(a)(2)(B), substituted ''that does not meet standards of credit-worthiness as established by the Corporation'' for ''not of investment grade''.

Subsec. (d)(2). Pub. L. 111–203, §939(a)(2)(C), struck out ''not of investment grade'' after ''security''.

Subsec. (d)(3). Pub. L. 111–203, §939(a)(2)(D), (E), redesignated par. (4) as (3) and struck out former par. (3). Prior to amendment, text of par. (3) read as follows:

''(A) IN GENERAL.—The Corporation shall require any savings association or any subsidiary of any savings as-

sociation to divest any corporate debt security not of investment grade the retention of which is not permissible under paragraph (1) as quickly as can be prudently done, and in any event not later than July 1, 1994.

''(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any corporate debt security not of investment grade held by any savings association or subsidiary on August 9, 1989, the savings association or subsidiary shall be deemed not to be in violation of the prohibition in paragraph (1) on retaining such investment so long as the association or subsidiary complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such securities.''

Subsec. (d)(3)(A). Pub. L. 111–203, §939(a)(2)(F)(i), (ii), redesignated subpar. (B) as (A) and struck out former subpar. (A). Prior to amendment, text of subpar. (A) read as follows: ''Any corporate debt security is not of 'investment grade' unless that security, when acquired by the savings association or subsidiary, was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.''

Subsec. (d)(3)(B). Pub. L. 111–203, §939(a)(2)(F)(iii), substituted ''that does not meet standards of creditworthiness as established by the Corporation'' for ''not of investment grade''.

Pub. L. 111–203, §939(a)(2)(F)(ii), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(3)(C). Pub. L. 111–203, §939(a)(2)(F)(ii), redesignated subpar. (C) as (B).

Subsec. (d)(4). Pub. L. 111–203, §939(a)(2)(E), redesignated par. (4) as (3).

Subsec. (e). Pub. L. 111–203, §939(a)(3)(A), struck out ''not of investment grade'' after ''security'' in heading.

Subsec. (e)(1). Pub. L. 111–203, §939(a)(3)(B), substituted ''that does not meet standards of credit-worthiness as established by the Corporation'' for ''not of investment grade'' in introductory provisions.

Subsec. (e)(2)(A)(ii). Pub. L. 111–203, §363(9)(A)(i)(I), substituted ''Comptroller of the Currency or the Corporation, as appropriate'' for ''Director of the Office of Thrift Supervision''.

Subsec. (e)(2)(B). Pub. L. 111–203, §939(a)(3)(C), substituted ''that does not meet standards of credit-worthiness established by the Corporation'' for ''not of investment grade''.

Subsec. (e)(2)(C). Pub. L. 111–203, §939(a)(3)(C), substituted ''that does not meet standards of credit-worthiness established by the Corporation'' for ''not of investment grade''.

Pub. L. 111–203, §363(9)(A)(i)(II), substituted ''Comptroller of the Currency or the Corporation, as appropriate,'' for ''Director of the Office of Thrift Supervision''.

Subsec. (e)(2)(D), (E). Pub. L. 111–203, §939(a)(3)(C), substituted ''that does not meet standards of creditworthiness established by the Corporation'' for ''not of investment grade''.

Subsec. (e)(2)(F). Pub. L. 111–203, §363(9)(A)(i)(III), substituted ''Comptroller of the Currency or the Corporation, as appropriate'' for ''Director of the Office of Thrift Supervision'' in introductory provisions.

Subsec. (e)(2)(F)(ii). Pub. L. 111–203, §939(a)(3)(C), substituted ''that does not meet standards of credit-worthiness established by the Corporation'' for ''not of investment grade''.

Subsec. (e)(2)(G). Pub. L. 111–203, §939(a)(3)(C), substituted ''that does not meet standards of credit-worthiness established by the Corporation'' for ''not of investment grade'' in two places.

Subsec. (e)(3)(A). Pub. L. 111–203, §939(a)(3)(C), substituted ''that does not meet standards of credit-worthiness established by the Corporation'' for ''not of investment grade''.

Pub. L. 111–203, §363(9)(A)(ii)(I), substituted ''Comptroller of the Currency or the Corporation, as appropriate'' for ''Director of the Office of Thrift Supervision''.

Subsec. (e)(3)(B). Pub. L. 111–203, §939(a)(3)(C), substituted ''that does not meet standards of credit-worthiness established by the Corporation'' for ''not of investment grade''.

Pub. L. 111–203, §363(9)(A)(ii)(II), substituted ''Comptroller of the Currency or the Corporation, as appropriate,'' for ''Director of the Office of Thrift Supervision'' in introductory provisions.

Subsec. (h)(2). Pub. L. 111–203, §363(9)(B), substituted ''Comptroller of the Currency, of the Corporation,'' for ''Director of the Office of Thrift Supervision''.

2006—Subsecs. (a)(1), (b)(1), (c)(2)(A). Pub. L. 109–173 substituted ''Deposit Insurance Fund'' for ''affected deposit insurance fund''.

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

1996—Subsecs. (a)(1), (b)(1), (c)(2)(A). Pub. L. 104–208, §2704(d)(14)(X), which directed substitution of ''Deposit Insurance Fund'' for ''affected deposit insurance fund'', was repealed by Pub. L. 109–171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

1994—Subsec. (c)(2)(A)(i). Pub. L. 103–325, §602(a)(56), substituted ''; or'' for '', or''.

Subsec. (d)(4)(C). Pub. L. 103–325, §602(a)(57), substituted ''subparagraph'' for ''subparagraphs''.

Subsec. (e)(4). Pub. L. 103–325, §602(a)(58), substituted ''and any other'' for ''any other''.

1991—Subsecs. (h), (i). Pub. L. 102–242 redesignated subsec. (i) as (h) and struck out former subsec. (h) which required that all savings associations with uninsured deposits disclose in clear and conspicuous statements that its deposits were not insured.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 363(9) of Pub. L. 111–203 effective on the transfer date, see section 351 of Pub. L. 111–203, set out as a note under section 906 of Title 2, The Congress.

Amendment by section 939(a)(2), (3) of Pub. L. 111–203 effective 2 years after July 21, 2010, see section 939(g) of Pub. L. 111–203, set out as a note under section 24a of this title.

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.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–242, title I, §151(a)(3), Dec. 19, 1991, 105 Stat. 2284, provided that the amendment made by that section is effective 1 year after Dec. 19, 1991.

§ 1831f. Brokered deposits

(a) In general

An insured depository institution that is not well capitalized may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into 1 or more deposit accounts.

(b) Renewals and rollovers treated as acceptance of funds

Any renewal of an account in any troubled institution and any rollover of any amount on deposit in any such account shall be treated as an