

96 Stat. 2511; Pub. L. 104-208, div. A, title II, §2613(e), Sept. 30, 1996, 110 Stat. 3009-477; Pub. L. 106-102, title I, §102(b)(2), Nov. 12, 1999, 113 Stat. 1342; Pub. L. 109-351, title VI, §602(b)(3), Oct. 13, 2006, 120 Stat. 1979.)

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-351, §602(b)(3)(A), inserted “as permissible under subsection (c), (d), or (e) or” after “Except” in introductory provisions.

Subsec. (c). Pub. L. 109-351, §602(b)(3)(B), inserted “or State savings association” after “State bank” wherever appearing.

Subsec. (d). Pub. L. 109-351, §602(b)(3)(C), inserted “or Federal savings association” after “national bank” wherever appearing.

Subsec. (e). Pub. L. 109-351, §602(b)(3)(D), inserted heading and amended text generally. Prior to amendment, text read as follows: “A bank service company that has both national bank and State bank shareholders or members shall perform only those services that may lawfully be performed by both any shareholder or member of the company which is a national bank under the law of the United States and any shareholder or member of the company which is a State bank under the law of the State in which any such State bank operate and shall perform such services only at locations in the State at which both its State bank and national bank shareholders or members could be authorized to perform such services.”

Subsec. (f). Pub. L. 109-351, §602(b)(3)(E), inserted “or savings associations” after “location of banks”.

1999—Subsec. (f). Pub. L. 106-102 inserted before period at end “as of the day before November 12, 1999”.

1996—Pub. L. 104-208, §2613(e)(5), substituted “company” for “corporation” in section catchline.

Subsec. (a). Pub. L. 104-208, §2613(e)(1), substituted “company” for “corporation” in two places.

Subsec. (b). Pub. L. 104-208, §2613(e)(1), (2), inserted “or members” after “shareholders” wherever appearing in text and substituted “company” for “corporation” in two places.

Subsecs. (c), (d). Pub. L. 104-208, §2613(e)(1), (3), inserted “or member” after “shareholder” wherever appearing and substituted “company” for “corporation”.

Subsec. (e). Pub. L. 104-208, §2613(e)(1), (4), substituted “company” for “corporation”, “any shareholder or member of the company which is a national bank” for “its national bank shareholder or shareholders”, “any shareholder or member of the company which is a State bank” for “its State bank shareholder or shareholders”, and “any such State bank” for “such State bank or banks”, and inserted “or members” after “national bank and State bank shareholders” and after “State bank and national bank shareholders”.

Subsec. (f). Pub. L. 104-208, §2613(e)(1), substituted “company” for “corporation”.

1983—Subsecs. (d), (e). Pub. L. 97-457 substituted “under the law of the United States” for “under this chapter”.

1982—Pub. L. 97-320 substituted provisions relating to bank service corporation activities for other persons for provisions which read: “No bank service corporation may engage in any activity other than the performance of bank services for banks.”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

### § 1865. Prior approval for investments in bank service companies

#### (a) Approval of Federal banking agency

No insured depository institution shall invest in the capital stock of a bank service company that performs any service under authority of

subsection (c), (d), or (e) of section 1864 of this title without prior notice, as determined by the appropriate Federal banking agency for the insured depository institution.

#### (b) Approval of Board

No insured depository institution shall invest in the capital stock of a bank service company that performs any service authorized only under authority of section 1864(f) of this title and no bank service company shall perform any activity authorized only under section 1864(f) of this title without the prior approval of the Board.

#### (c) Considerations in determining approval

In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of any insured depository institution and bank service company involved, including the financial capability of the insured depository institution to make a proposed investment under this chapter, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

#### (d) Failure to act on application for approval

In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

(Pub. L. 87-856, §5, Oct. 23, 1962, 76 Stat. 1133; Pub. L. 95-630, title III, §308, Nov. 10, 1978, 92 Stat. 3677; Pub. L. 97-320, title VII, §709, Oct. 15, 1982, 96 Stat. 1542; Pub. L. 103-325, title III, §323, Sept. 23, 1994, 108 Stat. 2227; Pub. L. 104-208, div. A, title II, §2613(f), Sept. 30, 1996, 110 Stat. 3009-478; Pub. L. 109-351, title VI, §602(b)(4), Oct. 13, 2006, 120 Stat. 1980.)

#### AMENDMENTS

2006—Subsec. (a). Pub. L. 109-351, §602(b)(4)(A), substituted “insured depository institution” for “insured bank”, struck out “bank’s” before “appropriate Federal banking agency”, and inserted “for the insured depository institution” before period at end.

Subsec. (b). Pub. L. 109-351, §602(b)(4)(B), substituted “insured depository institution” for “insured bank” and inserted “authorized only” after “performs any service” and “perform any activity”.

Subsec. (c). Pub. L. 109-351, §602(b)(4)(C), substituted “any insured depository institution” for “the bank or banks” and “capability of the insured depository institution” for “capability of the bank”.

1996—Pub. L. 104-208 substituted “companies” for “corporations” in section catchline and “company” for “corporation” wherever appearing in text.

1994—Subsec. (a). Pub. L. 103-325, §323(1), substituted “prior notice, as determined by” for “the prior approval of”.

Subsec. (c). Pub. L. 103-325, §323(2), inserted “or whether to approve or disapprove any notice” after “approval”.

1982—Pub. L. 97-320 substituted provisions relating to prior approval for investments in bank service corporations for provisions relating to regulation and examination of bank services for a regularly examined bank or

its subsidiary or affiliate whether performed on or off its premises. See section 1867(c) of this title.

1978—Pub. L. 95-630 among other changes, substituted provisions requiring banks regularly examined by a Federal supervisory agency, which cause to be performed, by contract or otherwise, any bank service for itself, to notify such supervisory agency of the existence of a service relationship within 30 days after making such service contract or performance of service, whichever occurs first for provisions requiring that no bank subject to examination by a Federal supervisory agency may cause to be performed, by contract or otherwise, any bank service for itself unless satisfactory assurances are furnished to such supervisory agency by both the bank and the party performing such services that the performances thereof will be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself.

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

### § 1866. Services to nonstockholders or nonmembers

No bank service company shall unreasonably discriminate in the provision of any services authorized under this chapter to any depository institution that does not own stock in or is not a member of the service company on the basis of the fact that such depository institution is in competition with an institution that owns stock in or is a member of the bank service company, except that—

(1) it shall not be considered unreasonable discrimination for a bank service company to provide services to a nonstockholding or nonmember institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(2) a bank service company may refuse to provide services to a nonstockholding or nonmember institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service company.

(Pub. L. 87-856, § 6, Oct. 23, 1962, as added Pub. L. 97-320, title VII, § 709, Oct. 15, 1982, 96 Stat. 1543; amended Pub. L. 104-208, div. A, title II, § 2613(g), Sept. 30, 1996, 110 Stat. 3009-478.)

#### AMENDMENTS

1996—Pub. L. 104-208, § 2613(g)(1)-(4), (6), in section catchline, inserted “or nonmembers” after “nonstockholders”, and in introductory provisions of text, substituted “company” for “corporation” wherever appearing and “such depository institution” for “the nonstockholding institution” and inserted “or is not a member of” after “does not own stock in” and “or is a member of” after “that owns stock in”.

Pars. (1), (2). Pub. L. 104-208, § 2613(g)(1), (5), substituted “company” for “corporation” wherever appearing and inserted “or nonmember” after “nonstockholding”.

### § 1867. Regulation and examination of bank service companies

#### (a) Principal investor

A bank service company shall be subject to examination and regulation by the appropriate

Federal banking agency of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder or principal member of such a bank service company may authorize any other Federal banking agency that supervises any other shareholder or member of the bank service company to make such an examination.

#### (b) Applicability of section 1818 of this title

A bank service company shall be subject to the provisions of section 1818 of this title as if the bank service company were an insured depository institution. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service company.

#### (c) Services performed by contract or otherwise

Notwithstanding subsection (a) of this section, whenever a depository institution that is regularly examined by an appropriate Federal banking agency, or any subsidiary or affiliate of such a depository institution that is subject to examination by that agency, causes to be performed for itself, by contract or otherwise, any services authorized under this chapter, whether on or off its premises—

(1) such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by the depository institution itself on its own premises, and

(2) the depository institution shall notify each such agency of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first.

#### (d) Issuance of regulations and orders

The Board and the appropriate Federal banking agencies are authorized to issue such regulations and orders as may be necessary to enable them to administer and to carry out the purposes of this chapter and to prevent evasions thereof.

(Pub. L. 87-856, § 7, Oct. 23, 1962, as added Pub. L. 97-320, title VII, § 709, Oct. 15, 1982, 96 Stat. 1543; amended Pub. L. 97-457, § 32(b)(1), Jan. 12, 1983, 96 Stat. 2511; Pub. L. 104-208, div. A, title II, § 2613(h), Sept. 30, 1996, 110 Stat. 3009-478; Pub. L. 109-351, title VI, § 602(b)(5), Oct. 13, 2006, 120 Stat. 1980; Pub. L. 111-203, title III, § 357(3), July 21, 2010, 124 Stat. 1548.)

#### AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111-203 inserted “each” after “notify”.

2006—Subsec. (b). Pub. L. 109-351, § 602(b)(5)(A), substituted “insured depository institution” for “insured bank”.

Subsec. (c). Pub. L. 109-351, § 602(b)(5)(B), substituted “a depository institution” for “a bank” in two places in introductory provisions and “the depository institution” for “the bank” in pars. (1) and (2).

1996—Pub. L. 104-208, § 2613(h)(3), substituted “companies” for “corporations” in section catchline.

Subsec. (a). Pub. L. 104-208, § 2613(h)(1), (2), substituted “company” for “corporation” wherever appearing and inserted “or principal member” after “principal shareholder” and “or member” after “other shareholder”.