

1940—Par. Eighth. Act June 11, 1940, added par. Eighth.

1938—Par. Seventh. Act Feb. 3, 1938, inserted “or obligations of national mortgage associations” in last sentence.

1935—Par. Seventh. Act Aug. 23, 1935, amended second, fourth, and last sentences.

1933—Act June 16, 1933, among other changes, struck out closing paragraph prohibiting transaction of any business by association prior to authorization by Comptroller, except that necessarily preliminary to organization.

1927—Act Feb. 25, 1927, struck out definite period of succession in par. Second, and inserted provisos in par. Seventh.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-173, §9(j), Feb. 15, 2006, 119 Stat. 3618, provided that: “This section [amending this section and sections 338a, 347b, 1431, 1441, 1441a, 1441b, 1464, 1467a, 1723i, 1735f-14, 1828a, 1833a, 1841, 1842, and 3341 of this title] and the amendments made by this section shall take effect on the day of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund [Mar. 31, 2006, see 71 F.R. 20524] pursuant to the Federal Deposit Insurance Reform Act of 2005 [subtitle B (§§2101-2109) of title II of Pub. L. 109-171, see Short Title of 2006 Amendment note set out under section 1811 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 1999 AMENDMENT

Pub. L. 106-102, title I, §161, Nov. 12, 1999, 113 Stat. 1384, provided that: “This title [enacting sections 24a, 1820a, 1828a, 1828b, 1831v, 1831w, and 1848a of this title and section 6701 of Title 15, Commerce and Trade, amending this section, sections 25a, 335, 371c, 1821, 1835a, 1841 to 1844, 1849, 1850, 1864, 1971, 2903, 3101, 3106, and 3107 of this title, and section 18a of Title 15, repealing sections 78 and 377 of this title, and enacting provisions set out as notes under sections 252, 1843, and 4801 of this title and section 41 of Title 15] (other than section 104 [enacting section 6701 of Title 15]) and the amendments made by this title shall take effect 120 days after the date of the enactment of this Act [Nov. 12, 1999].”

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 2704(d)(7) 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 1994 AMENDMENT

Pub. L. 103-325, title III, §347(d), Sept. 23, 1994, 108 Stat. 2241, provided that: “The amendments made by this section [amending this section and section 78c of Title 15, Commerce and Trade] shall become effective upon the date of promulgation of final regulations under subsection (c) [set out below].”

##### EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of Title 19, Customs Duties.

##### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1372 of Pub. L. 97-35, set out as an Effective

Date note under section 290i of Title 22, Foreign Relations and Intercourse.

##### EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93-224 effective Dec. 29, 1973, see section 20 of Pub. L. 93-224, set out as an Effective Date note under section 2281 of this title.

Amendment by Pub. L. 93-100 effective Aug. 16, 1973, see section 8 of Pub. L. 93-100, set out as an Effective Date note under section 1469 of this title.

##### EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-375, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

##### EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by title VIII of Pub. L. 90-448, see section 808 of Pub. L. 90-448, set out as an Effective Date note under section 1716b of this title.

##### EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 26, 1956, effective Jan. 1, 1957, see act July 26, 1956, ch. 741, title II, §202(a), 70 Stat. 667.

##### EFFECTIVE DATE OF 1933 AMENDMENT

Act June 16, 1933, ch. 89, §16, 48 Stat. 184, provided that restrictions of this section as to dealing in investment securities shall take effect one year after June 16, 1933.

##### REGULATIONS

Pub. L. 103-325, title III, §347(c), Sept. 23, 1994, 108 Stat. 2241, provided that: “Not later than 1 year after the date of enactment of this Act [Sept. 23, 1994], the Comptroller of the Currency shall promulgate final regulations, in accordance with the thirteenth sentence of Paragraph Seventh of section 5136 of the Revised Statutes [this section] (as amended by subsection (b)), to carry out the amendments made by this section [amending this section and section 78c of Title 15, Commerce and Trade].” [Final regulations implementing these amendments were published in the Federal Register on Dec. 2, 1996 [61 F.R. 63972], effective Dec. 31, 1996.]

##### ABOLITION OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of Home Owners' Loan Corporation, by act June 30, 1953, ch. 170, §21, 67 Stat. 126, see note set out under section 1463 of this title.

#### Executive Documents

##### 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.

#### § 24a. Financial subsidiaries of national banks

##### (a) Authorization to conduct in subsidiaries certain activities that are financial in nature

###### (1) In general

Subject to paragraph (2), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary.

###### (2) Conditions and requirements

A national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, only if—

(A) the financial subsidiary engages only in—

(i) activities that are financial in nature or incidental to a financial activity pursuant to subsection (b); and

(ii) activities that are permitted for national banks to engage in directly (subject to the same terms and conditions that govern the conduct of the activities by a national bank);

(B) the activities engaged in by the financial subsidiary as a principal do not include—

(i) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (except to the extent permitted under section 302 or 303(c) of the Gramm-Leach-Bliley Act [15 U.S.C. 6712 or 6713(c)]) or providing or issuing annuities the income of which is subject to tax treatment under section 72 of title 26;

(ii) real estate development or real estate investment activities, unless otherwise expressly authorized by law; or

(iii) any activity permitted in subparagraph (H) or (I) of section 1843(k)(4) of this title, except activities described in section 1843(k)(4)(H) of this title that may be permitted in accordance with section 122 of the Gramm-Leach-Bliley Act;

(C) the national bank and each depository institution affiliate of the national bank are well capitalized and well managed;

(D) the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of—

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) \$50,000,000,000;

(E) except as provided in paragraph (4), the national bank meets standards of credit-worthiness established by the Comptroller of the Currency or other requirement set forth in paragraph (3); and

(F) the national bank has received the approval of the Comptroller of the Currency for the financial subsidiary to engage in such activities, which approval shall be based solely upon the factors set forth in this section.

### **(3) Requirement**

#### **(A) In general**

A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.

#### **(B) Consolidated total assets**

For purposes of this paragraph, the size of an insured bank shall be determined on the basis of the consolidated total assets of the bank as of the end of each calendar year.

### **(4) Financial agency subsidiary**

The requirement in paragraph (2)(E) shall not apply with respect to the ownership or control of a financial subsidiary that engages

in activities described in subsection (b)(1) solely as agent and not directly or indirectly as principal.

### **(5) Regulations required**

Before the end of the 270-day period beginning on November 12, 1999, the Comptroller of the Currency shall, by regulation, prescribe procedures to implement this section.

### **(6) Indexed asset limit**

The dollar amount contained in paragraph (2)(D) shall be adjusted according to an indexing mechanism jointly established by regulation by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System.

### **(7) Coordination with section 1843(l)(2) of this title**

Section 1843(l)(2) of this title applies to a national bank that controls a financial subsidiary in the manner provided in that section.

## **(b) Activities that are financial in nature**

### **(1) Financial activities**

#### **(A) In general**

An activity shall be financial in nature or incidental to such financial activity only if—

(i) such activity has been defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to section 1843(k)(4) of this title; or

(ii) the Secretary of the Treasury determines the activity is financial in nature or incidental to a financial activity in accordance with subparagraph (B).

#### **(B) Coordination between the Board and the Secretary of the Treasury**

##### **(i) Proposals raised before the Secretary of the Treasury**

###### **(I) Consultation**

The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this section for a determination of whether an activity is financial in nature or incidental to a financial activity.

###### **(II) Board view**

The Secretary of the Treasury shall not determine that any activity is financial in nature or incidental to a financial activity under this section if the Board notifies the Secretary in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Secretary determines to be appropriate under the circumstances) that the Board believes that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

##### **(ii) Proposals raised by the Board**

###### **(I) Board recommendation**

The Board may, at any time, recommend in writing that the Secretary of

the Treasury find an activity to be financial in nature or incidental to a financial activity for purposes of this section.

**(II) Time period for secretarial action**

Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this section, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.

**(2) Factors to be considered**

In determining whether an activity is financial in nature or incidental to a financial activity, the Secretary shall take into account—

(A) the purposes of this Act<sup>1</sup> and the Gramm-Leach-Bliley Act;

(B) changes or reasonably expected changes in the marketplace in which banks compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

(D) whether such activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

**(3) Authorization of new financial activities**

The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act<sup>1</sup> and the Gramm-Leach-Bliley Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to a financial activity:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets.

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

**(c) Capital deduction**

**(1) Capital deduction required**

In determining compliance with applicable capital standards—

(A) the aggregate amount of the outstanding equity investment, including retained earnings, of a national bank in all financial subsidiaries shall be deducted from the assets and tangible equity of the national bank; and

(B) the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the national bank.

**(2) Financial statement disclosure of capital deduction**

Any published financial statement of a national bank that controls a financial subsidiary shall, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in the manner provided in paragraph (1).

**(d) Safeguards for the bank**

A national bank that establishes or maintains a financial subsidiary shall assure that—

(1) the procedures of the national bank for identifying and managing financial and operational risks within the national bank and the financial subsidiary adequately protect the national bank from such risks;

(2) the national bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the national bank and the financial subsidiaries of the national bank; and

(3) the national bank is in compliance with this section.

**(e) Provisions applicable to national banks that fail to continue to meet certain requirements**

**(1) In general**

If a national bank or insured depository institution affiliate does not continue to meet the requirements of subsection (a)(2)(C) or subsection (d), the Comptroller of the Currency shall promptly give notice to the national bank to that effect describing the conditions giving rise to the notice.

**(2) Agreement to correct conditions**

Not later than 45 days after the date of receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank shall execute an agreement with the Comptroller of the Currency and any relevant insured depository institution affiliate shall execute an agreement with its appropriate Federal banking agency to comply with the requirements of subsection (a)(2)(C) and subsection (d).

**(3) Imposition of conditions**

Until the conditions described in a notice under paragraph (1) are corrected—

(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the Comp-

<sup>1</sup> So in original.

troller of the Currency determines to be appropriate under the circumstances and consistent with the purposes of this section; and

(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of any relevant insured depository institution affiliate or any subsidiary of the institution as such agency determines to be appropriate under the circumstances and consistent with the purposes of this section.

**(4) Failure to correct**

If the conditions described in a notice to a national bank under paragraph (1) are not corrected within 180 days after the date of receipt by the national bank of the notice, the Comptroller of the Currency may require the national bank, under such terms and conditions as may be imposed by the Comptroller and subject to such extension of time as may be granted in the discretion of the Comptroller, to divest control of any financial subsidiary.

**(5) Consultation**

In taking any action under this subsection, the Comptroller shall consult with all relevant Federal and State regulatory agencies and authorities.

**(f) Failure to meet standards of credit-worthiness meet<sup>2</sup> applicable criteria**

**(1) In general**

A national bank that does not continue to meet standards of credit-worthiness established by the Comptroller of the Currency or other requirement of subsection (a)(2)(E) after acquiring or establishing a financial subsidiary shall not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank meets such requirements.

**(2) Equity capital**

For purposes of this subsection, the term “equity capital” includes, in addition to any equity instrument, any debt instrument issued by a financial subsidiary, if the instrument qualifies as capital of the subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

**(g) Definitions**

For purposes of this section, the following definitions shall apply:

**(1) Affiliate, company, control, and subsidiary**

The terms “affiliate”, “company”, “control”, and “subsidiary” have the meanings given those terms in section 1841 of this title.

**(2) Appropriate Federal banking agency, depository institution, insured bank, and insured depository institution**

The terms “appropriate Federal banking agency”, “depository institution”, “insured bank”, and “insured depository institution” have the meanings given those terms in section 1813 of this title.

**(3) Financial subsidiary**

The term “financial subsidiary” means any company that is controlled by 1 or more in-

sured depository institutions other than a subsidiary that—

(A) engages solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks; or

(B) a national bank is specifically authorized by the express terms of a Federal statute (other than this section), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.] or the Bank Service Company Act [12 U.S.C. 1861 et seq.].

**(4) Eligible debt**

The term “eligible debt” means unsecured long-term debt that—

(A) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(B) is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

**(5) Well capitalized**

The term “well capitalized” has the meaning given the term in section 1831o of this title.

**(6) Well managed**

The term “well managed” means—

(A) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

(i) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

(ii) at least a rating of 2 for management, if such rating is given; or

(B) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

(R.S. §5136A, as added Pub. L. 106-102, title I, §121(a)(2), Nov. 12, 1999, 113 Stat. 1373; amended Pub. L. 111-203, title IX, §939(d), July 21, 2010, 124 Stat. 1886.)

**Editorial Notes**

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in subsecs. (a)(2)(B)(iii), (b)(2)(A), (3), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. Section 122 of the Act is set out as a note under section 1843 of this title. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (g)(3)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of this title. Section 25A of the Fed-

<sup>2</sup>So in original. Probably should be “or meet”.

eral Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of this title.

The Bank Service Company Act, referred to in subsec. (g)(3)(B), is Pub. L. 87-856, Oct. 23, 1962, 76 Stat. 1132, as amended, which is classified generally to chapter 18 (§1861 et seq.) of this title. For complete classification of this Act to the Code, see section 1861 of this title and Tables.

#### PRIOR PROVISIONS

A prior section 5136A of the Revised Statutes was renumbered section 5136B by Pub. L. 106-102 and is classified to section 25a of this title.

#### AMENDMENTS

2010—Subsec. (a)(2)(E). Pub. L. 111-203, §939(d)(1), substituted “standards of credit-worthiness established by the Comptroller of the Currency” for “any applicable rating”.

Subsec. (a)(3). Pub. L. 111-203, §939(d)(2), substituted “Requirement” for “Rating or comparable requirement” in heading.

Subsec. (a)(3)(A). Pub. L. 111-203, §939(d)(3), amended subpar. (A) generally. Prior to amendment, text read as follows: “A national bank meets the requirements of this paragraph if—

“(i) the bank is 1 of the 50 largest insured banks and has not fewer than 1 issue of outstanding eligible debt that is currently rated within the 3 highest investment grade rating categories by a nationally recognized statistical rating organization; or

“(ii) the bank is 1 of the second 50 largest insured banks and meets the criteria set forth in clause (i) or such other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish by regulation and determine to be comparable to and consistent with the purposes of the rating required in clause (i).”

Subsec. (f). Pub. L. 111-203, §939(d)(4), substituted “meet standards of credit-worthiness” for “maintain public rating or” in heading.

Subsec. (f)(1). Pub. L. 111-203, §939(d)(5), substituted “standards of credit-worthiness established by the Comptroller of the Currency” for “any applicable rating”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title IX, §939(g), July 21, 2010, 124 Stat. 1887, provided that: “The amendments made by this section [amending this section, sections 1817, 1831e, and 4519 of this title, sections 78c and 80a-6 of Title 15, Commerce and Trade, and section 286hh of Title 22, Foreign Relations and Intercourse] shall take effect 2 years after the date of enactment of this Act [July 21, 2010].”

##### EFFECTIVE DATE

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

#### § 25. Omitted

##### Editorial Notes

##### CODIFICATION

Section, act July 1, 1922, ch. 257, §2, 42 Stat. 767, repealed all acts extending the period of succession of national banking associations for 20 years, and made paragraph Second of section 24 applicable in that respect.

#### § 25a. Participation by national banks in lotteries and related activities

##### (a) Prohibited activities

A national bank may not—

- (1) deal in lottery tickets;
- (2) deal in bets used as a means or substitute for participation in a lottery;
- (3) announce, advertise, or publicize the existence of any lottery;<sup>1</sup>
- (4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

##### (b) Use of banking premises prohibited

A national bank may not permit—

- (1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a), or
- (2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a).

##### (c) Definitions

As used in this section—

(1) The term “deal in” includes making, taking, buying, selling, redeeming, or collecting.

(2) The term “lottery” includes any arrangement, other than a savings promotion raffle, whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term “lottery ticket” includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(4) The term “savings promotion raffle” means a contest in which the sole consideration required for a chance of winning designated prizes is obtained by the deposit of a specified amount of money in a savings account or other savings program, where each ticket or entry has an equal chance of being drawn, such contest being subject to regulations that may from time to time be promulgated by the appropriate prudential regulator (as defined in section 5481 of this title).

##### (d) Lawful banking services connected with operation of lotteries

Nothing contained in this section prohibits a national bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

##### (e) Regulations; enforcement

The Comptroller of the Currency shall issue such regulations as may be necessary to the

<sup>1</sup> So in original. The word “or” probably should appear.