

TITLE 12 - BANKS AND BANKING
CHAPTER 12 - SAVINGS ASSOCIATIONS

Sec. 1464. Federal savings associations

STATUTE:

(d) Regulatory authority

(1) In general

(A) Enforcement

The Director shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), and regulations prescribed hereunder. In enforcing any provision of this section, regulations prescribed under this section, or any other law or regulation, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys. Except as otherwise provided, the Director shall be subject to suit (other than suits on claims for money damages) by any Federal savings association or director or officer thereof with respect to any matter under this section or any other applicable law, or regulation thereunder, in the United States district court for the judicial district in which the savings association's home office is located, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

(B) Ancillary provisions

(i) In making examinations of savings associations, examiners appointed by the Director shall have power to make such examinations of the affairs of all affiliates of such savings associations as shall be necessary to disclose fully the relations between such savings associations and their affiliates and the effect of such relations upon such savings associations. For purposes of this subsection, the term "affiliate" has the same meaning as in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(b)), except that the term "member bank" in section 2(b) shall be deemed to refer to a savings association.

(ii) In the course of any examination of any savings association, upon request by the Director, prompt and complete access shall be given to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings

association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the Director shall be given prompt and complete access to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

(iv) If prompt and complete access upon request is not given as required in this subsection, the Director may apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the institution is located, or in which the person denying such access resides or carries on business, for an order requiring that such information be promptly provided.

(v) In connection with examinations of savings associations and affiliates thereof, the Director may -

(I) administer oaths and affirmations and examine and to (FOOTNOTE 4) take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such savings association or affiliate, and (FOOTNOTE 4) So in original.

(II) issue subpoenas and, for the enforcement thereof, apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the savings association or affiliate is located, or in which the witness resides or carries on business.

Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

(vi) In any proceeding under this section, the Director may administer oaths and affirmations, take depositions, and issue subpoenas. The Director may prescribe regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted.

(vii) Any party to a proceeding under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district (or the United States court in any territory) in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena issued pursuant to this subsection or section 10(c) of the Federal Deposit Insurance Act (12 U.S.C. 1820(c)), and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Director in connection with this section shall be considered as nonadministrative expenses. Any court having

jurisdiction of any proceeding instituted under this section by a savings association, or a director or officer thereof, may allow to any such party reasonable expenses and attorneys' fees. Such expenses and fees shall be paid by the savings association.

(2) Conservatorships and receiverships

(A) Grounds for appointing conservator or receiver for insured savings association

The Director of the Office of Thrift Supervision may appoint a conservator or receiver for any insured savings association if the Director determines, in the Director's discretion, that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(5)) exists.

(B) Power of appointment; judicial review

The Director shall have exclusive power and jurisdiction to appoint a conservator or receiver for a Federal savings association. If, in the opinion of the Director, a ground for the appointment of a conservator or receiver for a savings association exists, the Director is authorized to appoint ex parte and without notice a conservator or receiver for the savings association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the Director to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Director to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(C) Replacement

The Director may, without any prior notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this subparagraph shall be removal of the conservator or receiver in office at the time of such removal.

(D) Court action

Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver or, except at the request of the Director, to restrain or affect the exercise of powers or functions of a conservator or receiver.

(E) Powers

(i) In general

A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Director.

(ii) FDIC or RTC as conservator or receiver

Except as provided in section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a), the Director, at the Director's discretion, may appoint the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as conservator for a savings association. The Director shall appoint only the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, as appropriate, as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association. The conservator or receiver so appointed shall, as such, have power to buy at its own sale. The Federal Deposit Insurance Corporation, as such conservator or receiver, shall have all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this chapter and any other provisions of law.

(F) Disclosure requirement for those acting on behalf of conservator

A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of a savings association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.

(3) Regulations

(A) In general

The Director may prescribe regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Director may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership.

(B) FDIC or RTC as conservator or receiver

In any case where the Federal Deposit Insurance Corporation or the Resolution Trust Corporation is the conservator or receiver, any regulations prescribed by the Director shall be consistent with any regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

(4) Refusal to comply with demand

Whenever a conservator or receiver appointed by the Director demands possession of the property, business, and assets of any savings association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than \$5,000 or imprisonment for not more than one year, or both.

(5) "Savings association" defined

As used in this subsection, the term "savings association" includes any savings association or former savings association that retains deposits insured by the Corporation, notwithstanding termination of its status as an institution insured by the Corporation.

(6) Compliance with monetary transaction recordkeeping and report requirements

(A) Compliance procedures required

The Director shall prescribe regulations requiring savings associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31.

(B) Examinations of savings associations to include review of compliance procedures

(i) In general

Each examination of a savings association by the Director shall include a review of the procedures required to be established and maintained under subparagraph (A).

(ii) Exam report requirement

The report of examination shall describe any problem with the procedures maintained by the association.

(C) Order to comply with requirements

If the Director determines that a savings association -

(i) has failed to establish and maintain the procedures described in subparagraph (A); or

(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Director, the Director shall issue an order under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) requiring such

association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

(7) Regulation and examination of savings association service companies, subsidiaries, and service providers

(A) General examination and regulatory authority

A service company or subsidiary that is owned in whole or in part by a savings association shall be subject to examination and regulation by the Director to the same extent as that savings association.

(B) Examination by other banking agencies

The Director may authorize any other Federal banking agency that supervises any other owner of part of the service company or subsidiary to perform an examination described in subparagraph (A).

(C) Applicability of section 8 of the Federal Deposit Insurance Act

A service company or subsidiary that is owned in whole or in part by a saving association shall be subject to the provisions of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) as if the service company or subsidiary were an insured depository institution. In any such case, the Director shall be deemed to be the appropriate Federal banking agency, pursuant to section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(D) Service performed by contract or otherwise

Notwithstanding subparagraph (A), if a savings association, a subsidiary thereof, or any savings and loan affiliate or entity, as identified by section 8(b)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(9)), that is regularly examined or subject to examination by the Director, causes to be performed for itself, by contract or otherwise, any service authorized under this chapter or, in the case of a State savings association, any applicable State law, whether on or off its premises -

(i) such performance shall be subject to regulation and examination by the Director to the same extent as if such services were being performed by the savings association on its own premises; and

(ii) the savings association shall notify the Director of the existence of the service relationship not later than 30 days after the earlier of -

(I) the date on which the contract is entered into; or
(II) the date on which the performance of the service is initiated.

(E) Administration by the Director

The Director may issue such regulations and orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), as may be necessary to enable the Director to administer and carry out this paragraph and to prevent evasion of this paragraph.

(8) Definitions

For purposes of this section -

(A) the term "service company" means -

(i) any corporation -

(I) that is organized to perform services authorized by this chapter or, in the case of a corporation owned in part by a State savings association, authorized by applicable State law; and

(II) all of the capital stock of which is owned by 1 or more insured savings associations; and

(ii) any limited liability company -

(I) that is organized to perform services authorized by this chapter or, in the case of a company, 1 of the members of which is a State savings association, authorized by applicable State law; and

(II) all of the members of which are 1 or more insured savings associations;

(B) the term "limited liability company" means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company; and

(C) the terms "State savings association" and "subsidiary" have the same meanings as in section 3 of the Federal Deposit Insurance Act.